

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REAL ESTATE
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL BURKE,
DONOHOE and JOANN DONOHOE, CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

Defendants.
-----X

Index No. 930/2006

FILED

JUN 21 2011

NOTICE OF MOTION FOR
SUMMARY JUDGMENT
COUNTY OF WESTCHESTER

Hon. Francis A. Nicolai
Assigned Justice

1500

8/13
18/9/10

PLEASE TAKE NOTICE, that on the annexed Affidavit of Donald J. Trump sworn to the 14th day of July, 2010 and the Affirmation of Julius W. Cohn dated July 14, 2010 a motion will be made before the Honorable Francis A. Nicolai, a justice of this Court at the Westchester County Courthouse in the City of White Plains, New York on August 13, 2010 at 9:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for an Order pursuant to Article 15 of the Real Property Actions and Proceedings Law and Section 3212 of the Civil Practice Law and Rules, granting judgment to the Plaintiff as follows:

a. That the Defendants and each of them and any and every person through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;

b. Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from the Seven Springs Parcel to the south to the section of Oregon Road more particularly identified in Exhibit "A" annexed to the Amended Complaint, including over lands which may be owned by The Nature Conservancy ("TNC") and others, in favor of Plaintiff, its successors and/or assigns.

c. Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel on its northerly and westerly sides.

d. Declaring the Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road.

e. Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiff's property as aforesaid.

f. That the Defendants be restrained by injunction or otherwise from maintaining any obstructions, barriers, gates, or the like, on, or across Oregon Road which obstructs or blocks the use by Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs Parcel.

g. That the Plaintiff be authorized to remove the gate and any other impediment that exists in the vicinity of "Pole 40" on Oregon Road so as to allow the Plaintiff and anyone on Plaintiff's behalf full and unfettered access to and from its property southerly over the entire length of Oregon Road, all together with such other and further relief as to this Court may seem just, proper and equitable, together with the costs and disbursements of this action.

PLEASE TAKE FURTHER NOTICE, pursuant to CPLR §2214, answering papers, if any, are to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: White Plains, New York
July 14, 2010

Yours, etc.,

COHN & SPECTOR

By: 

Julius W. Cohn

Attorneys for Plaintiff
200 East Post Road
White Plains, NY 10601
(914) 428-0505

TO: **BENOWICH LAW, LLP**
Attorneys for The Nature Conservancy
1025 Westchester Avenue
White Plains, NY 10604
(914) 946-2400

OXMAN, TULIS, KIRKPATRICK, WHYATT & GEIGER
Attorneys for Noel B. Donohoe and Joann Donohoe and
Robert Burke and Teri Burke
120 Bloomingdale Road
White Plains, NY 10601
(914) 422-3900

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

**AFFIDAVIT IN SUPPORT OF
MOTION**

**Hon. Francis A. Nicolai
Assigned Justice**

Defendants.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

DONALD J. TRUMP, being duly sworn deposes and says:

1. I own, directly and indirectly, 100% of the member interest in Seven Springs, LLC, Plaintiff in the above action. I have reviewed the Affirmation of Julius W. Cohn, Esq., a member of the firm of Cohn & Spector, attorneys representing Seven Springs, LLC in this action and all of the exhibits annexed thereto and I fully adopt Mr. Cohn's Affirmation in its entirety as though set forth at length herein.

2. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325, Page 243, which deed more particularly describes the Seven Springs Parcel. (A copy of the deed is annexed hereto as **EXHIBIT "G."**).

3. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

4. A title search was conducted of the chain of title of the Seven Springs Parcel and adjoining properties as of April 2006. A copy of the Certified Title Search dated August 15, 2006 is annexed hereto as **EXHIBIT "V."** The search of the Westchester County Clerk's records of the record owners of the Seven Springs Parcel and The Nature Conservancy Property as of April 26, 2006, certified by Fidelity National Title Insurance Company of New York and dated August 15, 2006, reveals the following:

(a) As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in Westchester County.

(b) Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of Defendant, The Nature Conservancy (the "Nature Conservancy Property").

(c) The Nature Conservancy Property and the Seven Springs Parcel were part of certain lands acquired over time by Meyer.

(d) By virtue of the various deeds pursuant to which Meyer acquired title to said real property, Meyer had also acquired the entire bed of Oregon Road from Sarles Road south to at least the northern border of what is now the Oregon Trails subdivision.

(e) The Nature Conservancy acquired title to the Nature Conservancy Property from the Eugene and Agnes E. Meyer Foundation ("the Foundation") by deed dated May

25, 1973 and recorded in the Westchester County Clerk's Office on May 30, 1973 in Liber 7127, Page 719. The Nature Conservancy Property is situated in the Towns of North Castle and New Castle, and is more particularly described in the above referenced deed recorded in the Westchester County Clerk's Office on May 30, 1973 in Liber 7127, Page 719. (A copy of the deed is annexed hereto as **EXHIBIT "H"**).

(f) The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described in the deeds together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

(g) Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County Clerk's Office on May 24, 1984 in Liber 7923, Page 639. (A copy of the deed is annexed hereto as **EXHIBIT "F"**).

(h) Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in Liber 7115, Page 592. (A copy of the deed is annexed hereto as **EXHIBIT "D"**).

(i) Yale University acquired title to the Seven Springs Parcel from the Foundation pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's Office on March 27, 1973 in Liber 7115, Page 577. (A copy of the deed is annexed hereto as **EXHIBIT "C"**).

5. It is Plaintiff's position in this case, as more particularly set forth in the Certified Title Search, that based upon the deeds in Seven Springs' chain of title it has an express

easement over Oregon Road in all directions as it abuts Seven Springs' property, by virtue of the grant: "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof." Seven Springs clearly has an express easement over Oregon Road southerly to the paved, public portion of Oregon Road in the vicinity of Pole 40 near Oregon Hollow Road. Furthermore, Seven Springs owns the roadbed of Oregon Road, to its center line, wherever its land abuts Oregon Road.

6. It should also be noted that it has come to our attention that the law firm of Stephens Baroni Reilly & Lewis, LLP, the attorneys who represented North Castle in this action, had previously requested that another title company, Fidelity Title, Ltd., also search the chain of title of Oregon Road, specifically for easement and access rights in favor of Seven Springs, LLC over Oregon Road, and that by letter dated February 16, 2006 to Mr. Baroni, Fidelity Title, Ltd. confirmed that Seven Springs, LLC has a private easement for access over Oregon Road. (A copy of the letter date stamped received by the Town of North Castle Planning Board on March 1, 2006 is annexed hereto as **EXHIBIT "W"**).

7. It is not alleged by any of the Defendants, nor does the certified search annexed hereto as **EXHIBIT "V"** reveal, that Oregon Road was ever owned by, or dedicated to, the Town of North Castle.

8. At no time did Seven Springs abandon its right to the easement. Counsel advises me that no proof has surfaced during extensive document discovery to establish that any of Plaintiff's predecessors in interest abandoned their rights to the easement.

9. Defendants Robert Burke and Teri Burke ("Burke"), were joined in this action as party Defendants by virtue of their ownership of the title to Lot 2 in the Oregon Trails subdivision,

which property abuts Oregon Road. Upon information and belief, Burke acquired title to real property known as 2 Oregon Hollow Road, Armonk, New York pursuant to deed dated April 29, 1993 and recorded May 12, 1993 in Liber 10576, Page 243. (A copy of the deed is annexed hereto as **EXHIBIT “R”**). The Burkes’ deed expressly excludes any grant of any “right, title and interest” in Oregon Road.

10. Defendants Noel B. Donohoe and Joann Donohoe (“Donohoe”), were joined in this action as party Defendants by virtue of their ownership of the title to Lot 1 in the Oregon Trails subdivision, which property abuts Oregon Road. Donohoe acquired title to real property known as 4 Oregon Hollow Road, Armonk, New York pursuant to deed dated July 27, 1994 and recorded August 9, 1994 in Liber 10929, Page 35. (A copy of the deed is annexed hereto as **EXHIBIT “S”**). The Donohoes’ deed expressly excludes any grant of any “right, title and interest” in Oregon Road.

11. Defendant Realis Associates, was joined as a party Defendant in this action by virtue of having been the developer of the subdivision known as “Oregon Trails” under filed map number 22547, a portion of which abuts the westerly side of Oregon Road. (A copy of filed map number 22547 is annexed hereto as **EXHIBIT “T”**). I am informed by Plaintiff’s counsel that Realis Associates has not appeared in this action.

12. On or about June 12, 2006 title to the property owned by Realis Associates, which is adjacent to the Burke and Donohoe properties, referred to above, was transferred to Seven Springs. A copy of the deed from Realis Associates to Seven Springs is annexed hereto as **EXHIBIT “U.”** It should be noted that the deed from Realis Associates to Seven Springs specifically provides that “the premises being conveyed are, and are intended to be, the same

premises retained by the party of the first part as set forth in deed from Realis Associates to Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in Liber 10576, Page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 8, 1994 in Liber 10929, Page 35." Furthermore, the description of the property includes a road widening easement for the future widening of Oregon Road approximately twenty-five (25) feet in width, along the easterly boundary line, said easement being as shown on the Subdivision Map of Property known as Oregon Trails, filed in the Westchester County Clerk's Office on December 9, 1986, as Map No. 22547 (**EXHIBIT "T"**).

13. Based upon the above Defendants Burke and Donohoe clearly have no rights in Oregon Road.

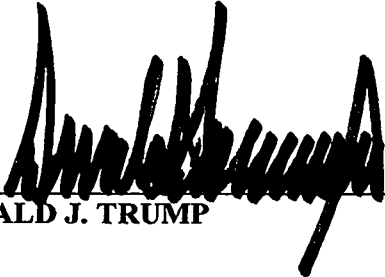
14. It is submitted that by reason of the foregoing facts and documentary evidence, The Nature Conservancy also does not possess any valid legal basis by which it can defeat or bar the exercise of Seven Springs' express easement rights over Oregon Road.

15. Further, based upon the above, and as set forth in the Amended Complaint, Plaintiff has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Sevens Springs Parcel, and that portion of Oregon Road, more particularly identified on **EXHIBIT "A"** to the Amended Complaint, southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access. The width of the Easement is estimated to be no less than 50 feet in width based upon the references in the above referenced deeds to Oregon Road, the Donnelly Survey annexed to the Certified Title Search (**EXHIBIT "V"**), the deed from Realis Associates to Seven Springs (**EXHIBIT "U"**), and filed map number 22547 (**EXHIBIT "T"**) more particularly identified above.


16. I am informed that this action has been discontinued as against the Town of North Castle (See **EXHIBITS "O," "P" and "Q"**).

WHEREFORE, it is respectfully requested that the within motion for summary judgment be granted in its entirety.

State of New York ()
County of New York) SS
Sworn to before me this
14th day of July, 2010



DONALD J. TRUMP



STEPHANIE A. LENNY
NOTARY PUBLIC, State of New York
O/L No. 31-495771
Qualified in New York County
Commission Expires September 5, 2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

**AFFIRMATION IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**Hon. Francis A. Nicolai
Assigned Justice**

Defendants.
-----X

JULIUS W. COHN, an attorney at law duly licensed to practice in the State of New York, under penalty of perjury hereby affirms and subscribes as follows:

1. I am a member of the law firm of Cohn & Spector, attorneys of record for Seven Springs, LLC, the Plaintiff in the within action ("Seven Springs"), and am fully familiar with all of the facts and circumstances heretofore had herein. I make this Affirmation and submit the accompanying Affidavit of Donald J. Trump, sworn to July 14, 2010 ("Mr. Trump's Affidavit") in support of the instant motion for an Order of this Court pursuant to Article 15 of the Real Property Actions and Proceedings Law and Section 3212 of the Civil Practice Law and Rules, granting judgment in favor of Plaintiff for the relief demanded in the Amended Complaint as follows:

a. That the Defendants and each of them and any and every person through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;

b. Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from the Seven Springs Parcel to the south to the section of Oregon Road more particularly

identified in Exhibit "A" annexed to the Amended Complaint, including over lands which may be owned by The Nature Conservancy ("TNC") and others, in favor of Plaintiff, its successors and/or assigns.

c. Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel on its northerly and westerly sides.

d. Declaring the Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road.

e. Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiff's property as aforesaid.

f. That the Defendants be restrained by injunction or otherwise from maintaining any obstructions, barriers, gates, or the like, on, or across Oregon Road which obstructs or blocks the use by Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs Parcel.

g. That the Plaintiff be authorized to remove the gate and any other impediment that exists in the vicinity of "Pole 40" on Oregon Road so as to allow the Plaintiff and anyone on Plaintiff's behalf full and unfettered access to and from its property southerly over the entire length of Oregon Road, all together with such other and further relief as to this Court may seem just, proper and equitable, together with the costs and disbursements of this action.

2. This Affirmation is based upon documentary evidence in the form of deeds, correspondence, surveys, maps and other written and printed exhibits as the same may be relevant to the issues raised herein and which are attached as exhibits hereto as follows:

a. As **EXHIBIT "A,"** Plaintiff's Amended Complaint.

b. As EXHIBIT “B,” the Defendants’ respective Answers to the Amended Complaint and Plaintiff’s reply to Defendant TNC’s counterclaim.

EXHIBITS RELATING TO PLAINTIFF SEVEN SPRINGS’ CHAIN OF TITLE

c. As EXHIBIT “C,” Deed from the Eugene and Agnes E. Meyer Foundation to Yale University dated January 19, 1973. A reading of the deed reflects continual and pervasive reference to metes and bounds taken along Oregon Road (e.g., in relation to Parcel I at Liber 7115 on page 579: “. . . to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford . . .; . . . thence southwesterly on a curve . . . then southwesterly on a curve to the right . . . connecting the northerly side of Oregon Road . . . and the northwesterly side of lower Byram Lake Road a distance of 65.13 feet to a point on the northerly side of Oregon Road . . .”; as to Parcel II at Liber 7115 on page 580 of the recorded deed “BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford . . . running then northeasterly from said point of beginning along the southerly side of Oregon Road in the Town of Bedford . . .”; on page 581 at the bottom “. . . to the easterly side of Oregon Road in the Town of North Castle; thence northerly and westerly along the easterly and northerly side of Oregon Road . . .”; on Page 583 “. . . connecting the northeasterly side of Oregon Road . . .”; on page 581 “. . . to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.” Clearly, the deed from the Meyer Foundation to Yale describes the subject parcel as abutting Oregon Road. The deed also contains the following language (at Liber 7115, page 585):

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

d. As **EXHIBIT “D,”** a deed recorded at Liber 7115, page 592, dated March 23, 1973 between Yale University as Grantor and Seven Springs Farms Center, Inc. as Grantee.¹ This deed conveys the same two parcels as were conveyed by the Meyer Foundation to Yale University as set forth in Exhibit “C” above. The language of the deed includes (at page 600 of the recorded deed) the identical provision as follows:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

e. As **EXHIBIT “E,”** a deed recorded in Liber 7245 at page 7, dated January 14, 1975, from Henry J. Heinz as Grantor to Seven Springs Farm Center, Inc. This parcel later was termed “Parcel III” in subsequent deeds (see, *infra*). This deed to “Parcel III” (at Liber 7245, page 7) likewise makes references to portions of the land therein described running “. . . along the easterly side of Oregon Road . . .” and sets forth numerous courses and distances, and also contains the identical provision as follows:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

f. As **EXHIBIT “F,”** a deed recorded at Liber 7923, page 639 dated April 12, 1984 whereby all three parcels (now together in one deed) were conveyed by Seven Springs Center, Inc. to

¹Seven Springs Farm Center, Inc. has no connection with the within Plaintiff, Seven Springs, LLC. except for the fact that it is in the Plaintiff’s chain of title.

the Rockefeller University. All three parcels have the same descriptions as the earlier deeds in their direct chain of title as recited above and this deed contains the identical provision which states:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

g. As EXHIBIT “G,” a deed from the Rockefeller University as Grantor to the within Plaintiff, Seven Springs, LLC, said deed having been recorded in Liber 11325 at page 243 in the Westchester County Clerk’s Office on December 28, 1995. By this deed, the same three parcels, with identical descriptions as set forth above, were acquired by the Plaintiff with the following identical provision contained in the Plaintiff’s deed:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

**EXHIBITS RELATING TO THE NATURE
CONSERVANCY’s (“TNC”) CHAIN OF TITLE**

h. As EXHIBIT “H,” a deed dated May 25, 1973 recorded at Liber 7127, page 719 whereby the Eugene and Agnes E. Meyer Foundation, as Grantor, conveyed to TNC, as Grantee, property described as “Parcel I” and “Parcel II” with various courses and distances set forth in the description of each parcel. Relative to “Parcel I” (Liber 7127, page 720), TNC’s deed contains courses and distances running along Oregon Road and has the following identical provision (at Liber 7127, page 728) as contained in all of the deeds in the Plaintiff’s chain of title:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

SURVEYS AND RELEVANT CORRESPONDENCE RELATING THERETO

I. Attached as **EXHIBIT “I”** is a survey map entitled:

“Survey showing land owned by Eugene and Agnes E. Meyer Foundation to be conveyed to The Nature Conservancy situated in the Town of North Castle, Westchester County, New York, Block 9018, Sheet 133, Sheet 146”.

This map was produced in discovery by Defendant TNC and bears TNC’s bates stamp number “TNC-M-004.” Although the legend in one corner of the map (next to the surveyor’s seal) is difficult to read, it states:

“We, HENRICIS’ the surveyors who made this map, do hereby certify that the survey of the property shown hereon was completed August 1972 and this map was completed April 3, 1973.”²

Also noted on the map (between the arrow pointing north and the diagram of a pond) is the following significant legend:

“Eugene and Agnes E. Meyer Foundation to be conveyed to Yale University”

Again, the survey (the actual walking of the land) was conducted in August 1972, approximately five (5) months before the conveyance to Yale University (Exhibit “C”) by the deed dated January 19, 1973; the survey map (Exhibit “I”) having been subsequently provided to TNC by a letter

²If there is any dispute as to the exact date on which the map was completed, the original photocopy remains in Defendant TNC’s possession.

dated May 18, 1973³, prior to the closing of title whereby TNC took its property on May 25, 1973 (Exhibit "H").

That the deed from the Meyer Foundation to TNC (Exhibit "H") was drawn from this map (Exhibit "I") cannot be disputed; by way of example, if one examines the map with the arrow pointing north in the upper left hand corner, the courses and distances on the left-hand side of TNC's 122.391 acre property are identical with the courses and distances set forth in the deed at Liber 7127 on page 725. Thus, *inter alia*, the following courses and distances appear:

**"North 12° 13' 35" west 28.71 feet
North 15° 36' 45" west 25.04 feet
North 32° 01' 16" east 56.92 feet
North 54° 40' 36" west 9.93 feet
North 70° 14' 05" west 19.75 feet . . ."**

The deed (Exhibit "H") was drawn from the map (Exhibit "I").

j. Attached as **EXHIBIT "J"** is a Memorandum written by Wayne G. Jackson, Esq., an attorney apparently employed by TNC. On page 2 of his Memorandum Mr. Jackson, on January 15, 1973 wrote:

"The survey of the property coming to TNC will probably not be completed before the middle of February, so our closing will be later than Yale's . . ."⁴

k. Attached as **EXHIBIT "K"** is a letter dated February 21, 1973 from the law firm of Cravath, Swaine & Moore, counsel for the Estate of Agnes E. Meyer. This letter to Wayne G. Jackson, Esq. in part states:

³The May 18, 1973 letter is attached as **EXHIBIT "L"** (*supra*).

⁴Mr. Jackson was in-house counsel for TNC in 1973. The two pages of Exhibit "J" bear TNC's bates stamp "TNC000303" and "TNC000304", and were produced by TNC during discovery.

“The surveyor says that the survey will not be completed until the middle of March, and we will send it to you as soon as we have it.”

l. Attached as **EXHIBIT “L”** is a letter from Cravath, Swaine & Moore dated May 18, 1973 to Wayne G. Jackson, in-house counsel for The Nature Conservancy which in part reads:

“At long last we have not only the survey, but also the proposed deed; a copy is enclosed . . .”

m. Attached as **EXHIBIT “M”** is a letter from Cravath, Swaine & Moore to Wayne G. Jackson, Esq. dated May 22, 1973 which (on the second page) in part states:

“I also have for you copies of the surveys of the different parcels of Seven Springs Farm passing to (1) Yale, (2) TNC and (3) The Foundation. These surveys consist of several very large sheets and I shall be glad to mail them to you in a big roll or directly to the people who will handle the application for tax exemption . . .”

Clearly, when TNC acquired title to its property it was fully aware of the abutting land owner (Yale University), the parameters of both properties and their respective relationships to each other, including the fact that each abutted Oregon Road. **The Meyer deed to Yale (EXHIBIT “C”) and the Meyer deed to TNC (EXHIBIT “H”) contain mirror grants of fee title to and express easements over Oregon Road.**

n. Attached as **EXHIBIT “N”** is a composite of two (2) surveys (attached to each other) made in August 2005 which depict the Plaintiff’s property and the area of Oregon Road directly to the south of Plaintiff’s property. The yellow (highlighted) portion of Oregon Road highlighted in yellow on this map reflects the portion of Oregon Road that is in dispute.

**EXHIBITS RELATING TO THE DISCONTINUANCE AGAINST
FORMER DEFENDANT TOWN OF NORTH CASTLE**

o. Attached as **EXHIBIT “O”** is a “proposed” Order of Discontinuance against the Town of North Castle dated June 30, 2009 which was signed by the Honorable Francis A. Nicolai, whereby this Court granted a motion made on behalf of the Town of North Castle discontinuing the within action, with prejudice and without costs, against that Defendant.

p. Attached as **EXHIBIT “P”** is a Stipulation of Settlement dated February 25, 2009, signed on behalf of Plaintiff Seven Springs and on behalf of the Town of North Castle. Subsequent motion practice (after TNC and the other Defendants objected to letting North Castle out of the case) resulted in the Order of Discontinuance (**EXHIBIT “O”**).

q. Attached hereto as **EXHIBIT “Q”** is a Decision of this Court dated August 11, 2009, entered on August 12, 2009 granting a motion by the Town of North Castle dismissing the within action as against the Town, with prejudice. The motion by the Town which resulted in the August 11, 2009 Order (Exhibit “N”) was opposed by Defendants TNC, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe.

**THE DEEDS AND MAPS RELATING TO DEFENDANTS BURKE
AND DONOHOE AND RELATIVE TO A SUBSEQUENT
CONVEYANCE BY REALIS**

r. Attached as **EXHIBIT “R”** is a deed dated April 29, 1993 between Realis Associates, as Grantor (again, Defendant Realis did not appear in this action) and Robert Burke and Teri Burke (“the Burkes”) as Grantees. This deed, in pertinent part, states:

“No right, title and interest in and to the streets are included in this sale, the same being reserved for dedication to the Town of North Castle . . .

SUBJECT TO a road widening easement for the future widening of Oregon Road approximately twenty-five (25') feet in width along the easterly boundary line . . .”

s. Attached as **EXHIBIT “S”** is a deed dated July 27, 1994 between Realis Associates as Grantor and Noel B. Donohoe and Joann Donohoe as Grantees, which contain the same language (no grant of rights in Oregon Road) as set forth in the Burke deed (Exhibit “P”) above.

t. Attached as **EXHIBIT “T”** is a subdivision map of Oregon Trails filed as map number 22547 in the Office of the Westchester County Clerk in or about December 9, 1986. The property of the Donohoe Defendants is depicted on that map as Lot Number 1. The property of the Burke Defendants is depicted on that map as Lot Number 2.⁵

u. Attached as **EXHIBIT “U”** is a deed dated June 12, 2006 by Realis Associates, as Grantor, to Seven Springs, LLC of a parcel of land forming a portion of the roadbed directly abutting the east side (the rear) of both the Burke and Donohoe properties. Accordingly, by virtue of having acquired this portion of the roadbed of Oregon Road from Realis, the Plaintiff holds fee title to the midpoint of Oregon Road in that location. This portion of Oregon Road was expressly excluded by Realis Associates in its respective deeds to Burke and Donohoe; neither Burke nor Donohoe ever held any fee interest or easement rights in that section of Oregon Road.

⁵The Donohoes and the Burkes enter and exit their respective properties by Oregon Hollow Road which leads into the public, paved portion of Oregon Road; the portion of Oregon Road behind both of their properties, depicted in red on **EXHIBIT “N”** (the survey map of Plaintiff’s property and the disputed portion of Oregon Road) was acquired by the Plaintiff from Realis (again, also Defendants Burke’s and Donohoe’s Grantor) by a deed dated June 12, 2006 (**EXHIBIT “U”**). Accordingly, the Plaintiff owns title to the midpoint of Oregon Road as the same abuts the rear of the Burke and Donohoe properties, that portion of the roadbed of Oregon Road having been conveyed to the Plaintiff by Realis in 2006.

THE TITLE INSURANCE COMPANY'S SEARCH
(CPLR 4523) AND RELATED OPINIONS

v. Attached as **EXHIBIT "V"** is a title certification by Fidelity National Title Insurance Company of New York, the same being a title insurance company organized under the laws of the State of New York. This certification, having the same legal effect as an official search (CPLR §4523) refers to deeds dated as far back as October 5, 1901 in setting forth an analysis of the chains of title of both the Plaintiff Seven Springs LLC and Defendant TNC. Relative to the rights of the Plaintiff in relation to Oregon Road, John Savoca, Esq., a Vice President and area counsel of Fidelity National Title wrote:

"Therefore, based upon our analysis of the above referenced deeds, the legal descriptions and the "together with the streets" clauses contained therein, this Company concluded that Seven Springs LLC had fee title in and to the ½ portion of Oregon Road, as same street/roadway abuts said property on its westerly side. Also, this Company concluded that Seven Springs enjoys a non-exclusive private easement as it abuts the property it owns as well as over lands owned by the Nature Conservancy and others to the public portion of Oregon Road to the south."

In examining the chain of title in the property now owned by Defendant TNC,

Mr. Savoca wrote:

"We have also examined the chain of title to the property now owned by the Nature Conservancy. Their source deed came from the Meyer Foundation to the Nature Conservancy by deed recorded in Liber 7127 cp 719 on May 30, 1973. Parcel I in that deed includes the ½ interest of the westerly portion of the roadway, and Parcel II includes that ½ interest of the southerly and easterly portions of said roadway and which deed also contains the together with the streets clause. The

Nature Conservancy still currently owns said property.”

w. Attached as **EXHIBIT “W”** is a letter dated February 16, 2006 from Stephen J. Bobolia, the President of Fidelity Title Ltd., acting as agent for LandAmerica Commonwealth, another title company. This letter is addressed to the attention of Roland A. Baroni, Jr., Esq. of the firm of Stephen, Baroni, Reilly & Lewis LLP. Mr. Baroni was the attorney representing the Town of North Castle (a former Defendant in this action, see **EXHIBITS “O”, “P” and “Q”**). Mr. Baroni, acting for the Town of North Castle requested that LandAmerica Commonwealth (as per the Bobolia letter) “search the chain of title to the abandoned portion of Oregon Road, specifically for easement and access rights in favor of Seven Springs LLC over same.”⁶ The President of LandAmerica Commonwealth advised counsel for North Castle as follows:

“Title was searched back to the early 1900's. By a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer Jr. acquired an assemblage of over 300 acres of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both the Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common owner, Eugene Meyer, Jr.. Although none of the deeds in the chain of title subsequent to Meyer included the abandoned portion of Oregon Road by metes and bounds, it was not excepted and the deeds all included the appurtenance clause “Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof”.

⁶The issue of the abandonment or discontinuance of Oregon Road as a public highway has been addressed in an Appellate Division Decision issued in this action (see, *infra*, **EXHIBIT “Y”**), and by virtue of the Stipulation of Settlement between Plaintiff and the Town of North Castle (**EXHIBIT “P”**), this issue is no longer part of this litigation.

Please note the legal description contained in the deeds into Meyer did not run along the sides of the abandoned portion of Oregon Road but included Oregon Road by metes and bounds. Based upon the state of title that Eugene Meyer, Jr. was the common owner of both the abandoned portion of Oregon Road and the abutting land now owned by the Nature Conservancy and Seven Springs, LLC it is my opinion in accordance with case law, Seven Springs, LLC does have a private easement for access over the abandoned portion of Oregon Road.”

x. Attached as **EXHIBIT “X”** is a letter to Jason D. Greenblatt, Esq. of the Trump Organization dated November 15, 2005 regarding the Seven Springs property. The letter, signed by Jonathan A. Richards, confirms Fidelity National Title’s examination of title to the premises known as “Seven Springs” and in particular the question of rights of the current owner, Seven Springs, LLC (Plaintiff) in respect to Oregon Road which abuts that property on its westerly boundary. In his letter Mr. Richards, *inter alia*, writes:

“In addition, we have determined that the LLC also enjoys a non-exclusive private easement in Oregon Road as it abuts its property and continues past property formerly owned by the common owner of Oregon Road, the Eugene and Agnes E. Meyer Foundation, lands now owned by the Nature Conservancy and others, to the public portion of Oregon Road to the south.”

APPELLATE DIVISION DECISION IN THIS ACTION

y. Attached as **EXHIBIT “Y”** is a Decision by the Appellate Division, Second Judicial Department in the instant action which appears at 48 A.D. 3d 545, 855 N.Y.S. 2d 547 (2nd Dept. 2008) whereby the Appellate Division reversed an Order of the Supreme Court (LaCava, J.) which had dismissed Plaintiff’s Complaint in the within action, the Appellate Division holding that (1) the Complaint

stated a cause of action and (2) the Town's (North Castle's) abandonment of Oregon Road as a public highway did not serve to extinguish any private easements. It should be noted that subsequent to the February 13, 2008 Decision of the Appellate Division the Plaintiff served and filed an Amended Complaint on April 3, 2008 (**EXHIBIT "A"**).

The Court is respectfully referred to the annexed Affidavit of Donald J. Trump and to Plaintiff's Memorandum of Law in support of the instant motion, submitted simultaneously herewith. It is requested that the Memorandum of Law be made part of the record in view of the fact that the arguments supporting the instant motion are expressed therein.

3. Based upon the documentary evidence set forth above and the Affidavits of Donald J. Trump annexed hereto, and the Memorandum of Law submitted herewith, it is respectfully submitted that summary judgment should issue in favor of the Plaintiff, Seven Springs, LLC.

WHEREFORE, it is respectfully requested that a judgment issue granting the following relief:

a. That the Defendants and each of them and any and every person through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;

b. Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from the Seven Springs Parcel to the south to the section of Oregon Road more particularly identified in Exhibit "A" annexed to the Amended Complaint, including over lands which may be owned by The Nature Conservancy ("TNC") and others, in favor of Plaintiff, its successors and/or assigns.

c. Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel, on its northerly and westerly sides.

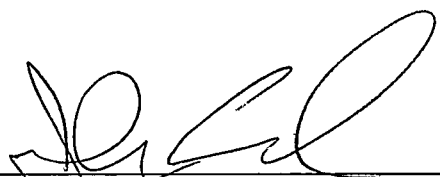
d. Declaring the Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road.

e. Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiff's property as aforesaid.

f. That the Defendants be restrained by injunction or otherwise from maintaining any obstructions, barriers, gates, or the like, on, or across Oregon Road which obstructs or blocks the use by Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs Parcel.

g. That the Plaintiff be authorized to remove the gate and any other impediment that exists in the vicinity of "Pole 40" on Oregon Road so as to allow the Plaintiff and anyone on Plaintiff's behalf full and unfettered access to and from its property southerly over the entire length of Oregon Road, all together with such other and further relief as to this Court may seem just, proper and equitable, together with the costs and disbursements of this action.

Dated: White Plains, New York
July 14, 2010



JULIUS W. COHN, ESQ.

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LOURDES SALVADOR, being duly sworn, deposes and says:

That I am over the age of 18 and not a party to the within action; that I reside in Middletown, New York, that on July 16, 2010, I served the within **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** upon:

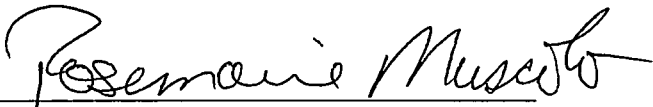
TO: Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604

Oxman, Tulis, Kirkpatrick, Wyatt & Geiger
120 Bloomingdale Road
White Plains, NY 10601

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. (Federal Express Tracking No.: 798858009665 & 798858054782).


LOURDES SALVADOR

Sworn to before me this
16th day of July, 2010



Rosemarie Muscolo
Notary Public, State of New York
4753358
Qualified in Westchester County
Commission Expires February 28, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(EXHIBITS SUBMITTED SEPARATELY)

COHN & SPECTOR

Attorneys for Plaintiff

200 EAST POST ROAD

WHITE PLAINS, N. Y 10601-4959

Tel.: (914) 428-0505

Fax: (914) 428-0519

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____

Signature _____

Print Signer's Name _____

Service of a copy of the within

is hereby admitted.

Dated: _____

Attorney(s) for _____

PLEASE TAKE NOTICE

NOTICE OF ENTRY

that the within is a true copy of an entered in the office of the clerk of the within named Court on

NOTICE OF SETTLEMENT on

that an Order of which the within is a true copy will be presented for settlement to the Hon. _____ at _____ M. one of the judges of the within named Court,

Dated: White Plains, New York
July 14, 2010

COHN & SPECTOR
200 EAST POST ROAD
WHITE PLAINS, N. Y 10601-4959

Attorney(s) for Stated Plaintiff

NOTICE OF ENTRY

ISSUE # 9130-06

Motion
\$45

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

**EXHIBITS TO MOTION
FOR SUMMARY
JUDGMENT**

**Hon. Francis A. Nicolai
Assigned Justice**

Defendants.
-----X

EXHIBIT "A" - Plaintiff's Amended Complaint.

EXHIBIT "B" - Defendants' respective Answers to the Amended Complaint and Plaintiff's reply to Defendant TNC's counterclaim.

EXHIBIT "C" - Deed from the Eugene and Agnes E. Meyer Foundation to Yale University dated January 19, 1973.

EXHIBIT "D" - Deed recorded at Liber 7115, page 592, dated March 23, 1973 between Yale University as Grantor and Seven Springs Farms Center, Inc. as Grantee.

EXHIBIT "E" - Deed recorded in Liber 7245 at page 7, dated January 14, 1975, from Henry J. Heinz as Grantor to Seven Springs Farm Center, Inc.

EXHIBIT "F" - Deed recorded at Liber 7923, page 639 dated April 12, 1984 whereby all three parcels (now together in one deed) were conveyed by Seven Springs Center, Inc. to the Rockefeller University.

EXHIBIT "G" - Deed from the Rockefeller University as Grantor to Seven Springs, LLC, recorded in Liber 11325 at page 243 in the Westchester County Clerk's Office on December 28, 1995.

EXHIBIT "H" - Deed dated May 25, 1973 recorded at Liber 7127, page 719, whereby the Eugene and Agnes E. Meyer Foundation, as Grantor, conveyed to TNC, as Grantee.

FILED
JUN - 1 2011
MOTHY C. DONI
COUNTY CLERK
COUNTY OF WESTCHESTER

- EXHIBIT "I"** - Survey map entitled: "Survey showing land owned by Eugene and Agnes E. Meyer Foundation to be conveyed to The Nature Conservancy situated in the Town of North Castle, Westchester County, New York, Block 9018, Sheet 133, Sheet 146".
- EXHIBIT "J"** - Memorandum written by Wayne G. Jackson, Esq. dated January 15, 1973.
- EXHIBIT "K"** - Letter dated February 21, 1973 from the law firm of Cravath, Swaine & Moore to Wayne G. Jackson, Esq.
- EXHIBIT "L"** - Letter from Cravath, Swaine & Moore dated May 18, 1973 to Wayne G. Jackson.
- EXHIBIT "M"** - Letter from Cravath, Swaine & Moore to Wayne G. Jackson, Esq. dated May 22, 1973.
- EXHIBIT "N"** - Composite of two (2) surveys (attached to each other) made in August 2005.
- EXHIBIT "O"** - A "proposed" Order of Discontinuance against the Town of North Castle dated June 30, 2009 and signed by the Honorable Francis A. Nicolai.
- EXHIBIT "P"** - Stipulation of Settlement dated February 25, 2009.
- EXHIBIT "Q"** - Decision dated August 11, 2009, entered on August 12, 2009.
- EXHIBIT "R"** - Deed dated April 29, 1993 between Realis Associates, as Grantor and Robert Burke and Teri Burke as Grantees.
- EXHIBIT "S"** - Deed dated July 27, 1994 between Realis Associates as Grantor and Noel B. Donohoe and Joann Donohoe as Grantees.
- EXHIBIT "T"** - Subdivision map of Oregon Trails filed as map number 22547 in the Office of the Westchester County Clerk in or about December 9, 1986.
- EXHIBIT "U"** - Deed dated June 12, 2006 by Realis Associates, as Grantor, to Seven Springs, LLC.
- EXHIBIT "V"** - Title certification by Fidelity National Title Insurance Company of New York dated August 15, 2006.
- EXHIBIT "W"** - Letter dated February 16, 2006 from Stephen J. Bobolia addressed to the attention of Roland A. Baroni, Jr., Esq. of the firm of Stephen, Baroni, Reilly & Lewis LLP.
- EXHIBIT "X"** - Letter to Jason D. Greenblatt, Esq. of the Trump Organization dated November 15, 2005 and signed by Jonathan A. Richards.
- EXHIBIT "Y"** - Appellate Division Decision.

A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE
and JOANN DONOHOE,

Defendants.
-----X

Index No. 9130/06

AMENDED
COMPLAINT

RECEIVED
APR 3 - 2008
TIMOTHY G. J. JIN
COUNTY CLERK
COUNTY OF WESTCHESTER

Plaintiff, Seven Springs, LLC, by its attorneys, DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, for its amended complaint against defendants, The Nature Conservancy, Realis Associates, The Town of North Castle, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Seven Springs, LLC ("Seven Springs") is a New York Limited Liability Company duly organized under the laws of the State of New York, and having a principal place of business at c/o The Trump organization, 725 Fifth Avenue, New York, New York 10022.
2. Upon information and belief, Defendant, The Nature Conservancy is a District of Columbia Corporation authorized to do business in the State of New York, and having a principal place of business at 570 Seventh Avenue, New York, New York, 10018.
3. Upon information and belief, Defendant, Realis Associates ("Realis"), is a New York Partnership having a principal place of business at 356 Manville Road, Pleasantville, New York.

4. Upon information and belief, Defendant, The Town of North Castle, is a governmental subdivision of The State of New York, which has been organized and exists under and pursuant to the laws of the State of New York, and is located in Westchester County.

5. Upon information and belief, Defendants Robert Burke and Teri Burke are residents of the State of New York, residing at 2 Oregon Hollow Road, Armonk, New York.

6. Upon information and belief, Defendants Noel B. Donohoe and Joann Donohoe are residents of the State of New York, residing at 4 Oregon Hollow Road, Armonk, New York.

7. This action is brought pursuant to Article 15 of the Real Property Action and Proceedings Law to compel the determination of claims to certain real property herein described and known as Oregon Road located in the County of Westchester.

8. Annexed hereto as **Exhibit "A"**, and made a part hereof, are copies of a portion of the Official Map of the Town of North Castle adopted by the Town Board on October 23, 1997 and portion of the official tax map of the Town of North Castle as of July 18, 1986. The portion of Oregon Road which is the subject of this action, as the same is shown on the said Maps, has been highlighted.

9. Seven Springs is the owner of a parcel of property (the "Seven Springs Parcel") comprising approximately 213 acres, and known on the tax assessment map of the Town of New Castle, County of Westchester as Section 94.17, Block 1, Lots 8 and 9, on the Tax Assessment Map of the Town of North Castle as Section 2, Block 6, Lots 1 and 2, and on the Tax Assessment Map of the Town of Bedford as Section 94.18, Block 1, Lot 1 and Section 94.14, Block 1, Lot 9.

10. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325 Page 243, which deed more particularly describes the Seven Springs Parcel.

11. Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County clerk's office on May 24, 1984 in liber 7923 page 639.

12. Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in liber 7115 page 592.

13. Yale University acquired title to the Seven Springs Parcel from the Eugene and Agnes E. Meyer Foundation (the "Foundation") pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's office on March 27, 1973 in liber 7115, page 577.

14. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road.

15. As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in the County of Westchester and State of New York.

16. Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of Defendant, The Nature Conservancy (the "Nature Conservancy Property").

17. The Nature Conservancy Property and the Seven Springs Parcel was part of certain lands acquired over time by Meyer.

18. By virtue of the various deeds pursuant to which Meyer acquired title to said real property Meyer had acquired the entire bed of Oregon Road as show on **Exhibit "A"**.

19. Upon information and belief, the Nature Conservancy acquired title to the Nature Conservancy Property from the Foundation by deed dated May 25, 1973 and recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

20. Upon information and belief, the Nature Conservancy Property is situated in the Towns of North Castle and New Castle, County of Westchester and is more particularly described in the aforesaid deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

21. At some point in time prior to 1973 Oregon Road became a public road by virtue of its having been used as a public highway for a period of 10 years.

22. Up until and including May, 1990 when the Town of North Castle allegedly "discontinued" the subject portion of Oregon Road said road was a public street.

23. Upon information and belief, the said portion of Oregon Road referred to herein, at paragraph 8 "ends" at its southerly terminus, at the portion of Oregon Road, a legally opened public street, that has been improved and paved.

24. The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described therein together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

25. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

26. By virtue of the December 22, 1995 Deed recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior deeds thereto, and the facts herein set forth, Plaintiff has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access.

27. That none of the Defendants has any fee interest in or right of user over that portion of the said portion of Oregon Road as described in paragraph 8 hereof, to the exclusion of Plaintiff's right, title and interest in and to Oregon Road.

28. The Defendants and each of them claim, and it appears from the public record that it or they will claim an interest in, and/or the fee title of, the bed of said Oregon Road abutting its or their respective premises as hereinafter set forth, and/or a right to prevent Plaintiff's right of ingress and egress to and from the Seven Springs Parcel to the legally opened portion of Oregon Road.

29. Any estate or interest claimed, or which may be claimed by any Defendant in the premises described in paragraph 8 hereof is invalid and ineffective as against the estate and interest of the Plaintiff therein to a right-of-way and/or easement for ingress and egress over Oregon Road.

30. Any estate, right or interest which Defendant The Nature Conservancy ever had, claims or may claim in the Nature Conservancy Property, or any part thereof, including the estates and interest claimed or which may be claimed by it by virtue of the instruments and facts hereinbefore set forth are ineffective and invalid as against the title and interest of Seven

Springs, LLC, its successors in interest, grantees or transferees in and to an easement for ingress and egress over the Nature Conservancy Property.

31. By reason of the foregoing, and the above-referenced deeds and the rights set forth therein, Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts said property on its westerly side, and there is a valid and enforceable easement and/or right of way for ingress and egress for pedestrian and vehicular access over Oregon Road to the south, including over lands which may be owned by The Nature Conservancy and others to the public portion of Oregon Road in favor of Plaintiff, its successors and assigns (the "Easement" or "Easement Area").

32. Upon information and belief there are no Defendants either known or unknown to Plaintiff not herein joined as a party and there is no Defendant who is or might be an infant, mentally retarded, mentally ill or an alcohol abuser.

33. Any judgment granted herein will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the aforesaid premises, and every person in being who would have been entitled to such estate or interest, if such event had happened immediately before the commencement of the action is named as a party hereto.

34. No personal claim is made against any Defendant herein named unless such Defendant shall assert a claim adverse to the claim of the Plaintiff as set forth herein.

35. None of the Defendants or the parcels owned by them is or will be adversely affected by the relief herein sought.

36. The Defendant, Town of North Castle, is joined herein as a party Defendant by, reason of, among other things, Oregon Road is located in the Town of North Castle, and said municipality purported to close and/or discontinue the portion of Oregon Road which is the subject of this action.

37. The Defendant, Realis Associates, is joined herein as a party Defendant by virtue of having been the developer of the subdivision known as "Oregon Trails" under filed map number 22547, a portion of which abuts the westerly side of Oregon Road.

38. Defendants, Robert Burke and Teri Burke, acquired title to real property known as 2 Oregon Hollow Road, Armonk, New York pursuant to deed dated April 29, 1993 and recorded May 12, 1993 in liber 10576 page 243 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 2 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

39. Defendants, Noel B. Donohoe and Joann Donohoe, acquired title to real property known as 4 Oregon Hollow Road, Armonk, New York pursuant to deed dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 1 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

40. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

41. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 40 above as if the same were more fully set forth at length herein.

42. Defendant Town of North Castle caused at some point in time to be erected and thereafter maintained a barrier on Oregon Road at or near the point designated as "Pole 40" and where the road abuts the public portion of Oregon Road, a barrier consisting of a gate (the "Gate") thereby partially blocking and obstructing direct access to or from Oregon Road to the south by persons in vehicles and depriving Plaintiff, Plaintiff's visitors, trades people and vehicles and the like their lawful right to pass unimpeded over the road and to have ingress and egress over the road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

43. That the Gate is an unlawful encroachment and obstruction upon the Plaintiff's Easement as aforesaid and has caused and will continue to cause damage to the Plaintiff by reason of Plaintiff's inability to have direct access to the Seven Springs Parcel unimpeded from the south.

44. That by reason of the Gate as aforesaid, the Plaintiff has been and will in the future be deprived of the full use and enjoyment of the Seven Springs Parcel and Plaintiff has thereby suffered and will in the future suffer damages thereby.

45. That the Plaintiff has notified Defendant North Castle that the Gate obstructs direct access to the Seven Springs Parcel from the south, has demanded that Defendant North Castle remove the Gate, and the Defendant has failed to remove the same.

46. That the injuries complained of are consistent and continuous and Plaintiff has suffered and will suffer injury, which injury will be continuous, and that to obtain any redress the Plaintiff will necessarily be involved in continued litigation with the Defendant and will suffer continuing damages.

47. That on or about February 13, 2008 a Decision was issued by the Appellate Division, Second Department in the matter entitled Seven Springs, LLC v. The Nature Conservancy, et al., (NYAD 2d Dept, 2008 NY Slip Op. 01327).

48. That the Decision provides in pertinent part that “the abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished. (Citations omitted)”. That by reason of the foregoing Decision it has been judicially determined that Defendant North Castle never extinguished the Easement pursuant to Highway Law § 205.

49. It has been acknowledged in prior Court proceedings by the Town of North Castle that, upon the closing of Oregon Road for public purposes, title reverted to Rockefeller University (Plaintiff’s predecessor in interest) upon the closure.

50. By reason of the foregoing, North Castle has no legal interest in and to the private use of the Easement Area by the private persons entitled to the benefits of the Easement, no claim to public use of the Easement Area or any claim of any kind or nature with regard to the Easement, no basis in law or fact to advance any claim with regard to the Easement and use of the Easement Area by the Town of North Castle, in its capacity as a municipal corporation, or by residents of the Town or the public generally, and no basis in law or fact to maintain the Gate on or over Oregon Road, or prevent or attempt to prevent Plaintiff from having unobstructed access to the Seven Springs Parcel over Oregon Road.

51. As a result of Defendant’s actions Plaintiff has been, and will in the future be, deprived of the full use and enjoyment of the Seven Springs Parcel, and the value of the Seven

Springs Parcel has been greatly diminished, and Plaintiff has suffered and will in the future suffer damages thereby.

52. That unless the relief be granted to Plaintiff, as hereinafter prayed for, the Plaintiff will suffer irreparable damages and injuries.

53. That Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment:

- (1) That the Defendants and each of them and any and every person claiming through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;
- (2) Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from The Seven Springs Parcel to the south to the section of Oregon Road more particularly identified in **Exhibit "A"** annexed hereto, including over lands which may be owned by the Nature Conservancy and others, in favor of Plaintiff, its successors and/or assigns.
- (3) Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel on its westerly side.
- (4) Declaring that Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road;

- (5) Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiffs' property as aforesaid.
- (6) That the Defendants be restrained by injunction or otherwise from maintaining any obstructions, barriers, gates, or the like, on, or across Oregon Road which obstructs or blocks the use by Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs Parcel.
- (7) That Defendant, Town of North Castle, be directed to remove the Gate and all obstructions and/or barriers placed and/or maintained by it, on, or across Oregon Road which obstructs the use of Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land and to have ingress and egress over Oregon Road to the Seven Springs Parcel.
- (8) That the Plaintiff have such other, further and different relief in the premises as to the Court may seem just, equitable and proper, together with the costs and disbursements of this action, such costs to be against such Defendants as may defend this action.

Dated: White Plains, New York
April 3, 2008

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff

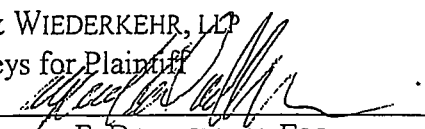
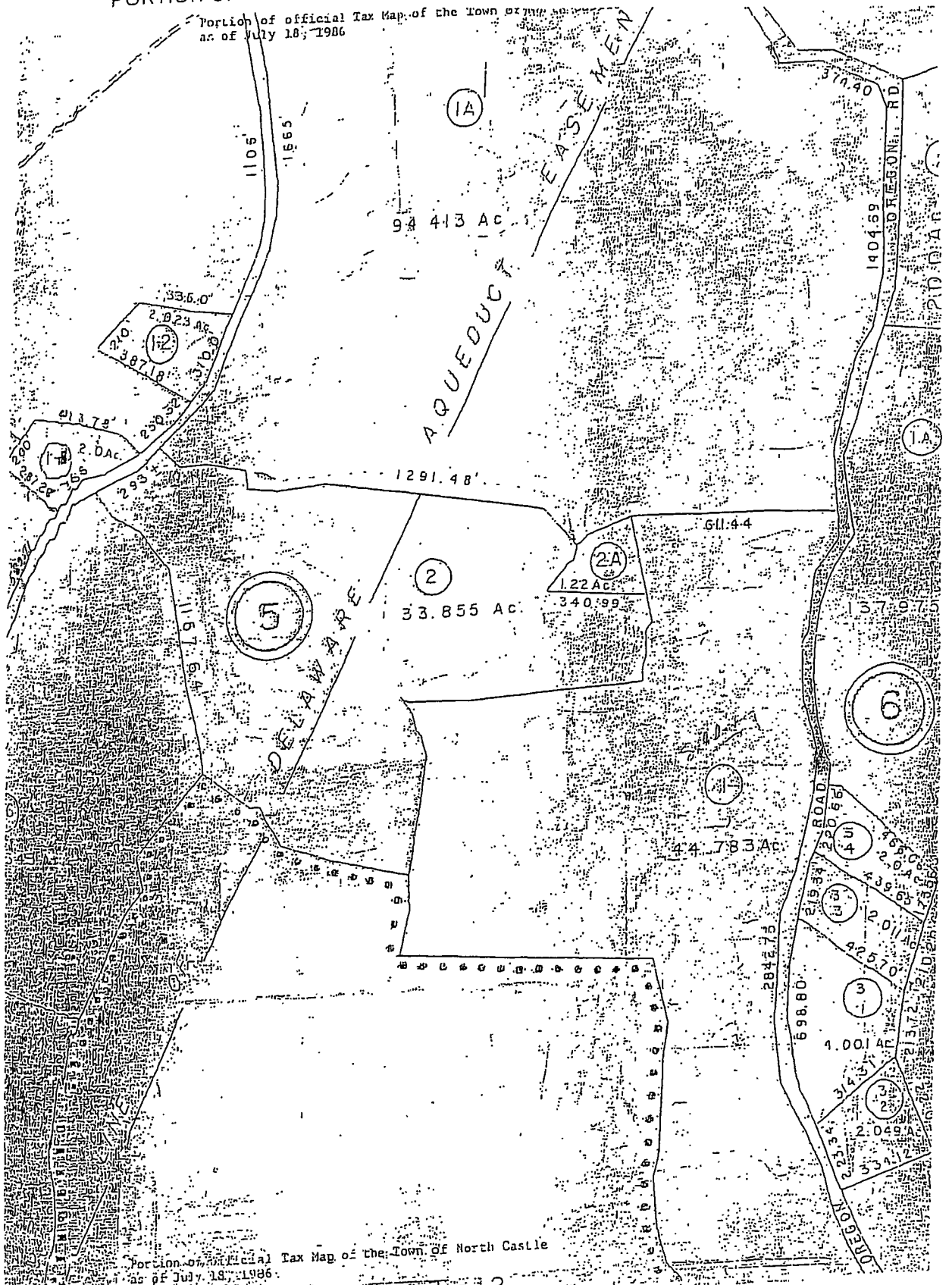

By: ALFRED E. DONNELLAN, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

EXHIBIT A TO COMPLAINT -
 PORTION OF THE OFFICIAL MAP OF THE TOWN OF NORTH CASTLE

Portion of official Tax Map of the Town of North Castle
 as of July 18, 1986

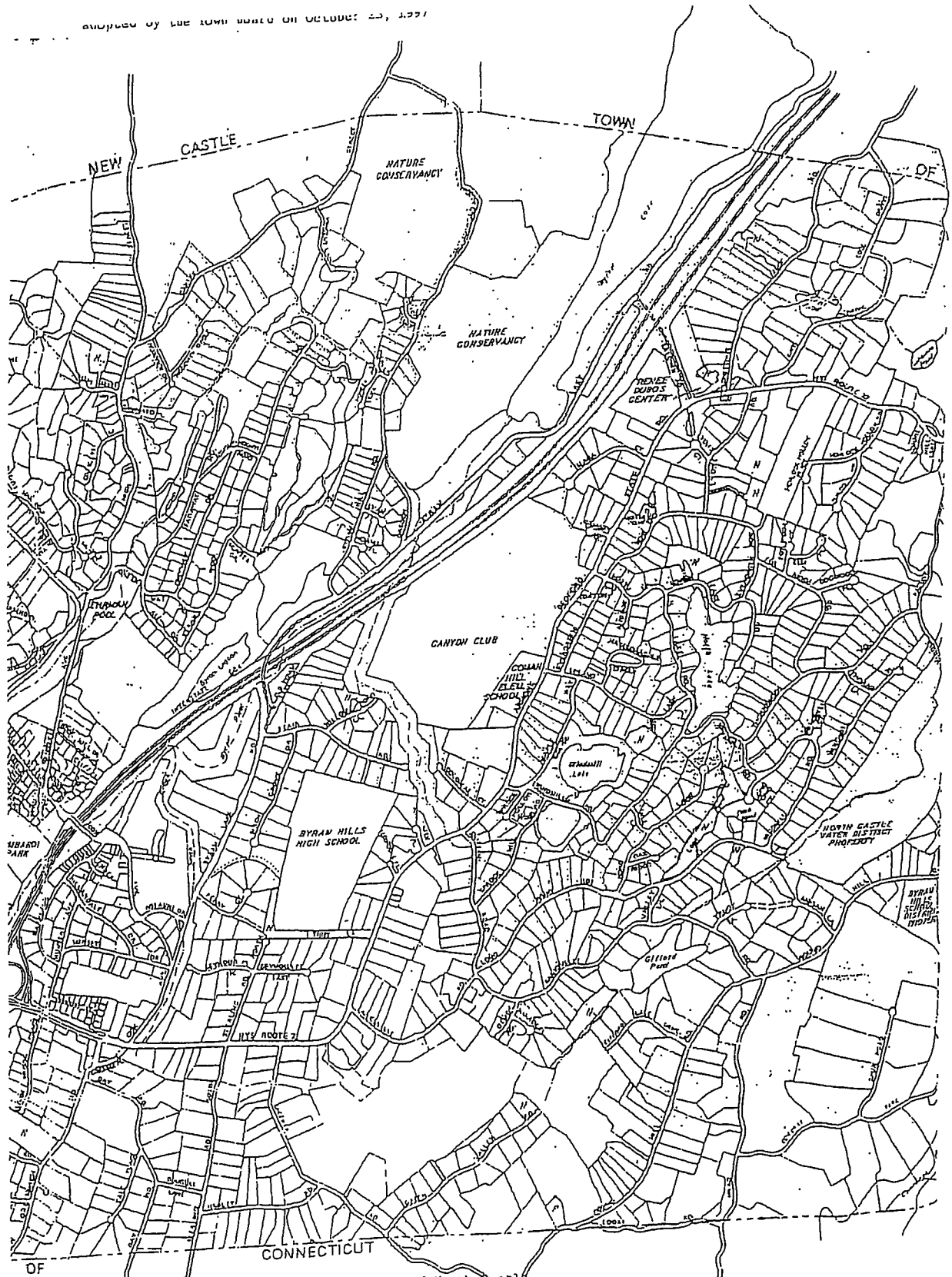


Portion of official Tax Map of the Town of North Castle
 as of July 18, 1986

SEE SHEETS 5, 6, 10, 11, 12

Poor
 Quality

adopted by the town board on October 23, 1997



Portion of official Map of the Town of North Castle adopted by the Town Board on October 23, 1997

Poor Quality

(Print signer's name below signature)

B

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SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

**ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM OF
THE NATURE CONSERVANCY**

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES, THE TOWN OF
NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.

-----x

Defendant The Nature Conservancy ("TNC"), by its attorneys, Benowich Law, LLP, as
and for its answer to the Amended Complaint ("Complaint") and its Counterclaim against
Plaintiff, alleges as follows:

As to the First Cause of Action

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Admits the allegations contained in paragraph 2 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Denies each and every allegation contained in paragraph 7 of the Complaint, except admits that plaintiff purports to bring this action pursuant to Article 15 of the Real Property Actions and Proceedings Law.

8. Denies each and every allegation contained in paragraph 8 of the Complaint, and refers the Court to the document referred to therein for its contents.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and refers the Court to the deed referred to therein for its contents.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and refers the Court to the deed referred to therein for its contents.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and refers the Court to the deed referred to therein for its contents.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and refer the Court to the deed referred to therein for its contents.

14. Denies each and every allegation contained in paragraph 14 of the Complaint.

15. Admits the allegations contained in paragraph 15 of the Complaint, upon information and belief.

16. Denies each and every allegation contained in paragraph 16 of the Complaint.

17. Denies each and every allegation contained in paragraph 17 of the Complaint, except admit that the lands owned by TNC - referred to in the Complaint as the "Nature Conservancy Property" - were owned at one time by Eugene Meyer, Jr. ("Meyer")

18. Admits the allegations contained in paragraph 18 of the Complaint.

19. Admits the allegations contained in paragraph 19 of the Complaint.

20. Denies each and every allegation contained in paragraph 20 of the Complaint, and refers the Court to the deed referred to therein for its contents.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Denies each and every allegation contained in paragraph 22 of the Complaint.

23. Admits the allegations contained in paragraph 23 of the Complaint.

24. Denies each and every allegation contained in paragraph 24 of the Complaint, and refers the Court to the deed referred to therein for its contents.

25. Denies each and every allegation contained in paragraph 25 of the Complaint.

26. Denies each and every allegation contained in paragraph 26 of the Complaint.

27. Denies each and every allegation contained in paragraph 27 of the Complaint.

28. Denies each and every allegation contained in paragraph 28 of the Complaint, except admits that TNC does claim an interest in, and/or the fee title of, the bed of Oregon Road and that Plaintiff has none of the rights or interests which it asks this Court to declare in its favor.

29. Denies each and every allegation contained in paragraph 29 of the Complaint.

30. Denies each and every allegation contained in paragraph 30 of the Complaint.

31. Denies each and every allegation contained in paragraph 31 of the Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

35. Denies each and every allegation contained in paragraph 35 of the Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Denies each and every allegation contained in paragraph 40 of the Complaint.

As to the Second Cause of Action

41. Defendant repeats and realleges each and every responsive pleading set forth above in paragraphs 1 through 40.

42. Denies each and every allegation contained in paragraph 41 of the Complaint, except admits that, as a matter of record, in or about May 1990, defendant Town of North Castle duly acted, in accordance with New York law, to close a portion of Oregon Road, at the point designated as "Pole 40," for the reasons stated in the Certificate of Discontinuance.

43. Denies each and every allegation contained in paragraph 43 of the Complaint.

44. Denies each and every allegation contained in paragraph 44 of the Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

46. Denies each and every allegation contained in paragraph 46 of the Complaint.

47. Admit the allegations contained in paragraph 47 of the Complaint.

48. Denies each and every allegation contained in paragraph 48 of the Complaint, and respectfully refers the Court to the Decision referred to therein for its contents and its legal effect.

49. Denies knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 49 of the Complaint, and denies that title to any portion of Oregon Road was owned or reverted to Rockefeller University.

50. Denies each and every allegation contained in paragraph 50 of the Complaint.

51. Denies each and every allegation contained in paragraph 51 of the Complaint.

52. Denies each and every allegation contained in paragraph 52 of the Complaint.

53. Denies each and every allegation contained in paragraph 53 of the Complaint.

First Affirmative Defense

The Complaint fails to state a cause of action.

Second Affirmative Defense

The Complaint is barred, in whole or in part, by the applicable statute of limitations.

Third Affirmative Defense

The Complaint is barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

Fourth Affirmative Defense

The Complaint is barred, in whole or in part, by the applicable Statute of Frauds.

Fifth Affirmative Defense

The Complaint is barred, in whole or in part, because no easement or right-of-way was intended to be, nor was, conveyed to Plaintiff or its predecessors-in-title, by any of the deeds referred to in the Complaint.

Sixth Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished, prior to the time Plaintiff obtained title thereto, by Plaintiff's predecessor-in-title's abandonment, consent to the closing or discontinuance thereof and/or consent or acquiescence to the Town of North Castle's installation of a locked barrier or gate at "Pole 40."

Seventh Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished, prior to the time Plaintiff obtained title thereto, by the merger of the dominant and servient estates into the ownership of Meyer.

Eighth Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished by adverse possession.

Ninth Affirmative Defense

The Complaint is barred, in whole or in part, because Plaintiff knew or should have known, at the time it acquired the so-called Seven Springs Parcel that Oregon Road was closed, that no public road, street or way existed at that place and time and that no private easement over Oregon Road was intended to be, or had been, conveyed.

Tenth Affirmative Defense

The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel include one or more parcels of land that did not belong to, and were not acquired from, Meyer but which were acquired by Plaintiff or its predecessor-in-title after any claimed easement was extinguished. No easement may be implied where, as here, its use will benefit additional, or after-acquired parcels.

Eleventh Affirmative Defense

The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel have frontage on and access to a public highway to the northern portion of the Seven Springs Parcel.

Twelfth Affirmative Defense

The Complaint is bared, in whole or in part, because Plaintiff does not own, and never acquired, title to any portion of the bed of Oregon Road lying to the westerly side of the Seven Springs Parcel.

Counterclaim

1. TNC is a not for profit corporation organized and existing under the laws of the District of Columbia.
2. Upon information and belief, Plaintiff Seven Springs, LLC ("Seven Springs") is a limited liability company organized and existing under the laws of the State of New York.
3. In May 1973 TNC acquired approximately 230 acres of land situate in the Towns of New Castle and North Castle, from the Eugene and Agnes E. Meyer Foundation ("Foundation"), pursuant to and as described in a deed dated May 25, 1973 and recorded on May 30, 1973 in the Westchester County Clerk's Office, in Liber 7127, Page 719.
4. The TNC Parcel, as conveyed to TNC by the Foundation, includes fee simple title to Oregon Road and the lands over which Plaintiff asserted, for the first time in this action, an implied easement (the "Purported Easement Area").
5. The Foundation conveyed the TNC Parcel to TNC as a gift with the intention that TNC would maintain the TNC Parcel, and every part thereof, including the Purported Easement Area, as a nature preserve and sanctuary.

6. At all times relevant herein since May 1973, TNC has owned the TNC Parcel, including the Purported Easement Area, and has maintained such lands as a nature preserve and sanctuary.

7. At all times relevant since May 1973, TNC has permitted only limited use of the TNC Parcel, including of the Purported Easement Area, for the purposes of hiking and walking.

8. Signs posted at and about the TNC Parcel, including at the Purported Easement Area, state:

NATURE SANCTUARY

NO CAMPING HUNTING, TRAPPING FISHING FIRES OR PETS

NO REMOVAL OR DESTRUCTION OF PLANTS OR WILDLIFE

MOTOR VEHICLES PROHIBITED

9. In this action for the first time, Plaintiff has claimed an easement or right of way over the Purported Easement Area, which Plaintiff acknowledges is owned by TNC.

10. In this action, for the first time, Plaintiff claims to own title to the centerline of that portion of Oregon Road which lies to the westerly side of the Seven Springs Parcel.

11. Upon information and belief, commencing in or about February or March 2008, without seeking or obtaining TNC's consent or permission, Plaintiff caused its employees or agents to enter and trespass upon the TNC Parcel (including Oregon Road) and the Purported Easement Area for purposes and uses which are not permitted and which are inconsistent with TNC's rights in and to the TNC Parcel (including Oregon Road) and the Purported Easement Area.

12. Upon information and belief, Plaintiff or its agents or employees have, among other things, entered upon the TNC Parcel (including Oregon Road) and the Purported Easement Area with motor vehicles and removed vegetation from the TNC Parcel, Oregon Road and/or the Purported Easement Area.

13. Plaintiff has no rights in, to, or over the TNC Parcel (including but not limited to that portion known as Oregon Road) or the Purported Easement Area, and it has no rights to enter upon the TNC Parcel or the Purported Easement Area with motor vehicles or to remove vegetation therefrom, or otherwise inconsistent with the aforesaid posted regulations.

14. Plaintiff has unlawfully trespassed upon the TNC Parcel and the Purported Easement Area, and has engaged in conduct and activities that are offensive to and inconsistent with TNC's use and maintenance of the TNC Parcel and the Purported Easement Area as a nature preserve and sanctuary.

15. Unless restrained and enjoined from doing so, Plaintiff will continue to enter upon, alter, and use the TNC Parcel and the Purported Easement Area in violation of the posted regulations, thereby irreparably harming the natural state thereof and TNC's rights in and to the TNC Parcel.

16. TNC has no adequate remedy at law.

WHEREFORE, Defendant TNC demands judgment as follows:

- A. A permanent injunction restraining and enjoining Plaintiff Seven Springs, its agents and employees, successors and assigns, from:
- (1) entering upon the TNC Parcel, including but not limited to Oregon Road, and the Purported Easement Area with any motor vehicle, or

for any purpose other than in accordance with TNC's posted regulations for the use thereof; and

- (2) performing any work (including but not limited to cutting or removing any vegetation, shrubbery, bushes or trees; roadway grading; excavation; paving or preparing a roadway for paving; rock and/or debris removal) upon the TNC Parcel including but not limited to Oregon Road and the Purported Easement Area; and

B. Such other and further relief as this Court shall deem just, proper and equitable, together with the costs and disbursements of this action.

Dated: April 23, 2008

BENOWICH LAW, LLP

By: 

Leonard Benowich

1025 Westchester Avenue
White Plains, New York 10604
(914) 946-2400

**Attorneys for Defendant
The Nature Conservancy**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/06

**ANSWER OF DEFENDANTS
ROBERT BURKE, TERI
BURKE, NOEL B. DONOHOE
and JOANN DONOHOE**

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES, THE TOWN OF
NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.

Defendants Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe
(collectively, the "Individual Defendants"), by their attorneys, Oxman Tulis Kirkpatrick Whyatt
& Geiger, LLP, as and for their answer to the Complaint, respectfully allege as follows:

As to the First Cause of Action

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.
3. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.
5. Admit the allegations contained in paragraph 5 of the Complaint.
6. Admit the allegations contained in paragraph 6 of the Complaint.
7. Deny each and every allegation contained in paragraph 7 of the Complaint, except admit that plaintiff purports to bring this action pursuant to Article 15 of the Real Property Actions and Proceedings Law.
8. Deny each and every allegation contained in paragraph 8 of the Complaint, and refer the Court to the document referred to therein for its contents.
9. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.
10. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and refer the Court to the deed referred to therein for its contents.
11. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and refer the Court to the deed referred to therein for its contents.
12. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.
13. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and refer the Court to the deed referred to therein for its contents.

14. Deny each and every allegation contained in paragraph 14 of the Complaint.
15. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.
16. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.
17. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.
18. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.
19. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.
20. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and refer the Court to the deed referred to therein for its contents.
21. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.
22. Admit the allegations contained in paragraph 22 of the Complaint.
23. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and refer the Court to the deed referred to therein for its contents.
24. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.

25. Deny each and every allegation contained in paragraph 25 of the Complaint.
26. Deny each and every allegation contained in paragraph 26 of the Complaint.
27. Deny each and every allegation contained in paragraph 27 of the Complaint.
28. Deny each and every allegation contained in paragraph 28 of the Complaint.
29. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.
30. Deny each and every allegation contained in paragraph 30 of the Complaint.
31. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint.
32. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.
33. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.
34. Deny each and every allegation contained in paragraph 34 of the Complaint.
35. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, except admit, upon information and belief, that the defendant Town of North Castle discontinued the portion of Oregon Road which is the subject of this action.
36. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.
37. Deny each and every allegation contained in paragraph 37 of the Complaint, except admit that defendants Robert Burke and Teri Burke acquired title to real property known

as 2 Oregon Hollow Road, Armonk New York, pursuant to a deed dated April 29, 1993 and recorded May 12, 1993 in liber 10576 page 243, and further admit that their property abuts Oregon Road.

38. Deny each and every allegation contained in paragraph 38 of the Complaint, except admit that defendants Noel B. Donohoe and Joann Donohoe acquired title to real property known as 4 Oregon Hollow Road, Armonk, New York, pursuant to deed dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35, and further admit that their property abuts Oregon Road.

39. Deny each and every allegation contained in paragraph 39 of the Complaint.

As to the Second Cause of Action

40. The Individual Defendants repeat and reallege each and every allegation contained in paragraphs 1 through 39 hereof as if the same were fully set forth at length herein.

41. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint, except admit that the barrier gate erected by defendant Town of North Castle makes "the aforesaid section of Oregon Road, and roadway impassable to or from Oregon Road to the South by persons in vehicles" as alleged in paragraph 41 of the complaint, and affirmatively allege that in or about May 1990, defendant Town of North Castle duly acted, in accordance with New York Law, to close a portion of Oregon Road, at the point designated as "Pole 40".

42. Deny each and every allegation contained in paragraph 42 of the Complaint.

43. Deny each and every allegation contained in paragraph 43 of the Complaint.

First Affirmative Defense

44. The Complaint fails to state a cause of action.

Second Affirmative Defense

45. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

Third Affirmative Defense

46. The Complaint is barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

Fourth Affirmative Defense

47. The Complaint is barred, in whole or in part, by the applicable Statute of Frauds.

Fifth Affirmative Defense

48. The Complaint is barred, in whole or in part, because no easement or right-of-way was intended to be, nor was, conveyed to plaintiff or its predecessors-in-title, by any of the deeds referred to in the Complaint.

Sixth Affirmative Defense

49. The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by plaintiff was extinguished, prior to the time plaintiff obtained title thereto, by plaintiff's predecessor-in-title's abandonment, consent to the closing or discontinuance of that part of Oregon Road which is the subject of this action, and/or consent or acquiescence in the Town of North Castle's installation of a locked barrier or gate at "Pole 40".

Seventh Affirmative Defense

50. The Complaint is barred, in whole or in part, because any easement or right-of-

way claimed by plaintiff was extinguished, prior to the time plaintiff obtained title thereto, by the merger of the dominant and servient estates into the ownership of "Meyer," as defined in paragraph 15 of the complaint.

Eighth Affirmative Defense

51. The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by plaintiff was extinguished by adverse possession.

Ninth Affirmative Defense

52. The Complaint is barred, in whole or in part, because plaintiff knew or should have known, at the time it acquired the parcel defined in paragraph 9 of the complaint as the "Seven Springs Parcel" that Oregon Road was closed, that no public road, street or way existed at that place and time, and that no private easement then existed or was being conveyed.

Tenth Affirmative Defense

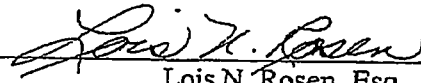
53. The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel include one or more parcels of land that did not belong to, and were not acquired from, Meyer but which were acquired by plaintiff or its predecessor in title after any claimed easement was extinguished. No easement may be implied where, as here, its use will benefit additional, or after-acquired parcels.

Eleventh Affirmative Defense

54. The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel have frontage on and access to a public highway to the northern portion of the Seven Springs Parcel.

WHEREFORE, the Individual Defendants respectfully request that the Complaint be dismissed with prejudice, and that this Court grant such other and further relief as it may deem just and proper.

Dated: White Plains, New York
March 10, 2008



Lois N. Rosen, Esq.

OXMAN TULIS KIRKPATRICK WHYATT &
GEIGER, LLP
120 Bloomingdale Road
White Plains, New York 10605
(914) 422-3900
Attorneys for Defendants Robert Burke, Teri Burke,
Noel Donohoe and Joann Donohoe

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No. 9130/2006

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE, TERI
BURKE, NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.
-----X

REPLY TO COUNTERCLAIM

SEVEN SPRINGS, LLC, the Plaintiff (hereinafter referred to as "Plaintiff"), by its attorneys, DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, as and for its Reply to the Counterclaim asserted by Defendant, THE NATURE CONSERVANCY ("TNC" or "Defendant"), in its Amended Answer dated March 28, 2008, respectfully alleges the following upon information and belief:

1. Denies each and every allegation set forth in Paragraphs "12", "13" and "15" of TNC's counterclaim.
2. Denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraphs "1", "3", "5", "6", "7" and "8" of TNC's counterclaim.
3. Denies knowledge and information sufficient to form a belief as to the allegations set forth in Paragraph "4" of TNC's counterclaim, except admits that Plaintiff has a valid and enforceable easement and/or right of way as asserted in the Amended Complaint.

4. Denies the allegations set forth in Paragraph "14" of TNC's counterclaim, except admits that Plaintiff has a valid and enforceable easement and/or right of way over, and rights to, Oregon Road as asserted in the Amended Complaint.

5. Denies the allegations set forth in Paragraph "9" of TNC's Counterclaim, except admits that Plaintiff has a valid and enforceable easement and/or right of way over, and rights to, Oregon Road as asserted in the Amended Complaint.

6. Denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "10" of TNC's Counterclaim, denies that Plaintiff has an obligation to "seek" or "obtain" permission to enter the Easement Area, except admits that Plaintiff has a valid and enforceable easement and/or right of way, and all rights attendant thereto, over the Easement Area.

7. Denies the allegations set forth in Paragraph "11" of TNC's Counterclaim, except admits that Plaintiff has a valid and enforceable easement and/or right of way, and all rights attendant thereto over the Easement Area, and that any actions taken by, or on behalf of, Plaintiff are consistent with those rights.

8. Admits the allegations set forth in Paragraph "2" of TNC's Counterclaim.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE


9. The Counterclaim fails to state a valid cause of action against Plaintiff upon which relief can be granted.

WHEREFORE, Plaintiff demands Judgment as prayed for in the Amended Complaint, Judgment against Defendant, TNC dismissing the Counterclaim contained in

TNC's Answer, and such other, further and different relief as to the Court may seem just, proper and equitable.

Dated: White Plains, New York
April 16, 2008

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP



By: Alfred E. Donnellan, Esq.
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

TO: Stephens Baroni Reilly & Lewis
Attorneys for Defendant
Town of North Castle
175 Main Street, Suite 800
White Plains, NY 10601

Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP
Attorneys for Defendant
Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe
120 Bloomingdale Road
White Plains, NY 10605

Roosevelt & Benowich, LLP
Attorneys for Defendant
The Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss:
COUNTY OF WESTCHESTER)

CHRISTINE WILLIAMS, being sworn says:

I am not a party to the action, am over 18 years of age and reside at White Plains, New York (office).

On April 17, 2008, I served a true copy of the annexed **Reply to Counterclaim** in the following manner:

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO:

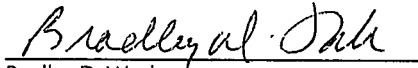
Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP
120 Bloomingdale Road
White Plains, New York 10605

Roosevelt & Benowich, LLP
1025 Westchester Avenue
White Plains, New York 10604

Stephens Baroni Reilly & Lewis
175 Main Street, Suite 800
White Plains, New York 10601


CHRISTINE WILLIAMS

Sworn to before me this
17th day of April, 2008.


Bradley D. Wank
Notary Public, State of New York
No. 60-4829597
Qualified in Westchester County
Commission Expires December 31, 2009

C

C

EXHIBIT H TO TRUMP AFFIDAVIT -
DEED, DATED JANUARY 19, 1973 [180-191]



000673086

LIBER 7115 PAGE 577

94007

MAR 27 1973

TAX STAMPS
ATTACHED 5

THIS INDENTURE, made the 19th day of January, nineteen hundred and seventy-three, between EUGENE AND AGNES E. MEYER FOUNDATION, a New York corporation having an office at 1730 Rhode Island Avenue, N.W., Washington, D.C. 20036 (the party of the first part), and YALE UNIVERSITY, a Connecticut corporation having an office in New Haven, Connecticut (the party of the second part).

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the successors and assigns of the party of the second part forever.

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being partially in the Towns of Bedford, New Castle and North Castle, County of Westchester and State of New York, more particularly described in Exhibit A annexed to and made a part of this deed.

LIBER 7115 PAGE 578

EXHIBIT A

Parcel I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager; running thence from said point of beginning; along said last mentioned land, and continuing along land now or formerly of Holand, the following forty-two courses and distances:

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North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.11 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	11.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	85°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet

to the northwesterly corner of land now or formerly of Glueck; thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	12"	West	66.55 feet
South	36°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	75°	35'	00"	West	26.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve, southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet

South	66°	41'	00"	West	138.42 feet
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to a point of curve, southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet

South	31°	57'	00"	West	46.34 feet
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to a point of curve, northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.37 feet

North	23°	02'	00"	West	29.00 feet
North	45°	22'	00"	West	70.87 feet

to a point of curve, westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet

South	54°	24'	00"	West	59.87 feet
South	58°	22'	00"	West	63.00 feet
South	67°	36'	00"	West	167.90 feet

to a point of curve, southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet

South	07°	12'	00"	West	114.78 feet
-------	-----	-----	-----	------	-------------

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 55.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle:

thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

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to a point on the easterly side of Woodside Road;
thence northerly along the easterly side of Woodside Road
the following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	11°	36'	50"	East	31.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	61.97 feet
North	02°	26'	30"	West	46.26 feet
North	06°	35'	30"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the
point or place of BEGINNING.

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The above-described parcel being also designated as (i) Lot
No. A41, Sheet No. 2, Section 27 on the Assessment Map of
the Town of New Castle and (ii) Lot No. 4A, Section 22 on
the Assessment Map of the Town of Bedford.

Parcel 11

BEGINNING at a point on the southerly side of Oregon Road
in the Town of Bedford where the same is intersected by the
dividing line between the premises herein described and the
northeasterly corner of land now or formerly of Davis;
running thence northeasterly from said point of beginning,
along the southerly side of Oregon Road in the Town of Bedford,
the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	13'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	97.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.38 feet

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to the westerly line of land now or formerly of Moinz;
thence along said last mentioned land, South 18° 39' 30"
East 571.16 feet to a corner;
thence continuing along said last mentioned land, North 77°
21' 20" East 11.51 feet to a monument;
thence continuing along said last mentioned land and par-
tially along a stone wall the following nine courses and dis-
tances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	31"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco;
thence along the westerly boundary of the Village of Mount
Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	10°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

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to a point and other land owned by Eugene and Agnes E. Moyer
Foundation;
thence along said last mentioned land the following twelve
courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	115.72 feet
South	19°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North
Castle;
thence northerly and westerly, along the easterly and north-
westerly side of Oregon Road, the following eighty-six courses

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and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	00°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	05'	10"	West	30.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	07°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet
North	61°	13'	00"	West	36.64 feet
North	61°	08'	50"	West	80.86 feet
North	62°	53'	20"	West	41.74 feet
North	61°	23'	20"	West	54.34 feet
North	51°	42'	35"	West	4.12 feet
North	64°	58'	50"	West	47.10 feet
North	80°	35'	00"	West	34.72 feet
North	86°	09'	30"	West	54.62 feet
North	56°	30'	10"	West	3.30 feet
South	66°	58'	10"	West	5.80 feet
South	87°	15'	10"	West	23.16 feet
North	17°	51'	00"	West	22.64 feet
North	04°	06'	10"	West	15.10 feet
North	22°	26'	50"	West	30.77 feet
North	38°	41'	00"	West	7.90 feet
North	25°	28'	50"	West	13.95 feet
North	32°	45'	30"	West	38.35 feet
North	47°	05'	20"	West	21.53 feet
North	26°	02'	40"	West	39.47 feet
North	56°	15'	20"	West	11.92 feet
North	32°	26'	20"	West	23.73 feet
North	27°	25'	50"	West	57.96 feet
North	36°	18'	25"	West	114.20 feet
North	-27°	43'	30"	West	45.93 feet
North	18°	11'	00"	West	74.61 feet
North	37°	28'	10"	West	12.57 feet
North	-19°	59'	45"	West	22.87 feet
North	12°	18'	50"	West	14.11 feet
North	24°	11'	40"	West	20.33 feet
North	16°	06'	45"	West	16.47 feet
North	00°	22'	45"	East	18.12 feet
North	13°	02'	40"	West	27.78 feet
North	07°	25'	45"	West	45.32 feet
North	12°	51'	50"	West	24.30 feet
North	00°	07'	00"	West	14.83 feet
North	15°	09'	40"	West	49.17 feet

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North	32°	13'	50"	West	39.54 feet
North	30°	20'	40"	West	43.29 feet
North	20°	51'	55"	West	25.58 feet
North	02°	49'	30"	West	15.83 feet
North	29°	38'	50"	West	15.46 feet
North	08°	12'	35"	West	12.18 feet
North	29°	28'	20"	West	17.01 feet
North	16°	45'	00"	West	17.31 feet
North	09°	34'	20"	West	28.32 feet
North	13°	48'	20"	West	36.16 feet
North	03°	45'	40"	East	12.35 feet
North	15°	01'	55"	West	46.88 feet
North	29°	21'	00"	West	53.50 feet
North	23°	46'	40"	West	17.29 feet
North	37°	32'	30"	West	14.49 feet
North	49°	15'	20"	West	44.49 feet
North	71°	28'	20"	West	11.64 feet
North	57°	26'	30"	West	10.54 feet
North	73°	01'	15"	West	37.09 feet
North	82°	18'	20"	West	47.87 feet
North	84°	10'	30"	West	22.47 feet
South	83°	01'	40"	West	22.16 feet
North	84°	54'	00"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius
 of 50.00 feet, connecting the northeasterly side of Oregon
 Road and the southeasterly side of Lower Byram Lake Road, a
 distance of 68.56 feet to a point on the southeasterly side
 of Lower Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeast-
 erly along the easterly and southerly side of Lower Byram
 Lake Road in the Town of New Castle and continuing along
 Oregon Road in the Town of Bedford, the following twelve
 courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a
 radius of 85.00 feet a distance of 185.47 feet,
 North 11° 57' 00" East 46.34 feet to a point
 of curve,
 easterly on a curve to the right having a radius
 of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point
 of curve,
 northerly on a curve to the left having a radius
 of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

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North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	22°	47'	50"	East	63.52 feet
North	31°	15'	05"	East	65.76 feet, and
				East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly of Davis; thence along said last mentioned land the following twenty-five courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet
South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz; running thence from said point of beginning, South 77° 21' 20" West 14.00 feet and South 02° 32' 40" East 162.00 feet to the point of beginning, said point of beginning being the northeasterly corner of the herein described parcel; running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner; thence South 83° 51' 20" West 104.32 feet to a corner; thence North 02° 07' 40" West 142.92 feet to a corner; and thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

The above-described parcel being also designated as (i) Lots

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No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration

RECORDED IN THE STATE OF NEW YORK
IN THE COUNTY OF NEW YORK
ON 07 14 50
BY [Signature]
\$ 200.00
PD 1552

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as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

EUGENE AND AGNES E. MEYER FOUNDATION,

By Davidson Kammur
Chairman

Attest:

Charles C. Glavin III
Vice-President



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~~STATE OF NEW YORK,~~)
DISTRICT OF COLUMBIA,) ss.:
~~COUNTY OF NEW YORK,~~)

On the 17th day of January, 1973, before me personally came Dwight Sommers, to me known, who, being by me duly sworn, did depose and say that he resides at 3900 Water Row, N.W., Washington, D.C.; that he is the Chairman of the EUGENE AND AGNES E. MEYER FOUNDATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



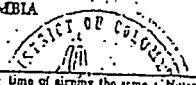
Robert W. Carter
Notary Public D.C.

My Commission Expires May 31, 1974

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Serial A 13019

DISTRICT OF COLUMBIA



To All Whom These Presents Shall Come, Greeting:

I Certify that ROBERT W. CARTER, whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deeds or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Executive Secretary to Commissioner of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D.C. this _____ day of JANUARY, 1975.

(D.C. SEAL)

E. M. Batchelder
Chief Deputy Public Officer

Notary Public Clerk



THIS INDENTURE, made the 23rd day of March, nine-
teen hundred and seventy-three, between YALE UNIVERSITY, a
Connecticut corporation having an office in New Haven,
Connecticut (the party of the first part), and SEVEN SPRINGS
FARM CENTER, INC., a New York not-for-profit corporation
having an office at Seven Springs Farm, Mount Kisco, New
York (the party of the second part).

WITNESSETH, that the party of the first part, in
consideration of ten dollars and other valuable consideration
paid by the party of the second part, does hereby grant and
release unto the party of the second part, the successors
and assigns of the party of the second part forever,

ALL those certain plots, pieces or parcels of land,
with the buildings and improvements thereon erected, situate,
lying and being partially in the Towns of Bedford, New Castle
and North Castle, County of Westchester and State of New York,
more particularly described in Exhibit A annexed to and made
a part of this deed.

04009
TAX STAMPS
ATTACHED \$
MAR 27 1973

EXHIBIT A

Parcel I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager; running thence from said point of beginning, along said last mentioned land, and continuing along land now or formerly of Roland, the following forty-two courses and distances:

North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.31 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	13.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	89°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet.

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to the northwesterly corner of land now or formerly of Glueck; thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	10"	West	66.55 feet
South	34°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	70°	35'	00"	West	20.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve,
southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet
South 66° 41' 00" West 138.42 feet
to a point of curve,
southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet
South 31° 57' 00" West 46.34 feet
to a point of curve,
northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.37 feet
North 23° 02' 00" West 29.00 feet
North 45° 22' 00" West 70.87 feet
to a point of curve,
westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet
South 54° 24' 00" West 59.87 feet
South 58° 22' 00" West 63.00 feet
South 67° 36' 00" West 167.90 feet
to a point of curve,
southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet
South 07° 12' 00" West 114.78 feet
to a point of curve;

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;
thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

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to a point on the easterly side of Woodside Road;
thence northerly along the easterly side of Woodside Road
the following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	13°	36'	50"	East	51.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	63.97 feet
North	02°	26'	30"	West	46.26 feet
North	06°	35'	36"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the
point or place of BEGINNING.

The above-described parcel being also designated as (i) Lot
No. A43, Sheet No. 2, Section 27 on the Assessment Map of
the Town of New Castle and (ii) Lot No. 4A, Section 22 on
the Assessment Map of the Town of Bedford.

Parcel 11

BEGINNING at a point on the southerly side of Oregon Road
in the Town of Bedford where the same is intersected by the
dividing line between the premises herein described and the
northeasterly corner of land now or formerly of Davis;
thence northeasterly from said point of beginning,
along the southerly side of Oregon Road in the Town of Bedford,
the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	11'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	97.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.38 feet

to the westerly line of land now or formerly of Heinz;
 thence along said last mentioned land, South 18° 39' 30"
 East 571.16 feet to a corner;
 thence continuing along said last mentioned land, North 77°
 21' 20" East 11.51 feet to a monument;
 thence continuing along said last mentioned land and par-
 tially along a stone wall the following nine courses and dis-
 tances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	30"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco;
 thence along the westerly boundary of the Village of Mount
 Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	10°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

to a point and other land owned by Eugene and Agnes E. Meyer
 Foundation;
 thence along said last mentioned land the following twelve
 courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	115.72 feet
South	18°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North
 Castle;
 thence northerly and westerly, along the easterly and north-
 westerly side of Oregon Road, the following eighty-six courses

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and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	00°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	09'	10"	West	38.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	02°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet
North	61°	13'	00"	West	36.64 feet
North	61°	08'	50"	West	80.86 feet
North	62°	53'	20"	West	41.74 feet
North	61°	23'	20"	West	54.34 feet
North	51°	42'	35"	West	4.12 feet
North	64°	58'	50"	West	47.10 feet
North	80°	35'	00"	West	34.72 feet
North	86°	09'	30"	West	54.62 feet
North	56°	30'	10"	West	3.30 feet
South	66°	58'	10"	West	5.80 feet
South	87°	15'	10"	West	23.16 feet
North	17°	51'	00"	West	22.64 feet
North	04°	06'	10"	West	15.10 feet
North	22°	26'	50"	West	30.77 feet
North	38°	41'	00"	West	7.90 feet
North	25°	28'	50"	West	13.95 feet
North	32°	45'	30"	West	38.35 feet
North	47°	05'	20"	West	21.53 feet
North	26°	02'	40"	West	39.47 feet
North	56°	15'	20"	West	11.92 feet
North	32°	26'	20"	West	23.73 feet
North	27°	25'	50"	West	57.96 feet
North	36°	18'	25"	West	114.20 feet
North	27°	43'	30"	West	45.93 feet
North	18°	11'	00"	West	74.61 feet
North	37°	26'	10"	West	12.57 feet
North	19°	59'	45"	West	22.87 feet
North	12°	18'	50"	West	14.11 feet
North	24°	11'	40"	West	20.33 feet
North	16°	06'	45"	West	16.47 feet
North	00°	22'	45"	East	18.12 feet
North	13°	02'	40"	West	27.78 feet
North	07°	25'	45"	West	45.32 feet
North	12°	51'	50"	West	24.30 feet
North	06°	07'	00"	West	14.83 feet
North	15°	09'	40"	West	49.17 feet

North	32°	13'	50"	West	39.54 feet
North	30°	20'	40"	West	43.29 feet
North	20°	51'	55"	West	25.58 feet
North	02°	49'	30"	West	15.83 feet
North	29°	38'	50"	West	15.46 feet
North	08°	12'	35"	West	12.18 feet
North	29°	28'	20"	West	17.01 feet
North	16°	45'	00"	West	17.31 feet
North	09°	34'	20"	West	28.32 feet
North	13°	48'	20"	West	36.16 feet
North	03°	45'	40"	East	12.35 feet
North	15°	01'	55"	West	46.88 feet
North	29°	21'	00"	West	53.50 feet
North	23°	46'	40"	West	17.29 feet
North	37°	32'	30"	West	14.49 feet
North	49°	15'	20"	West	44.49 feet
North	71°	28'	20"	West	11.64 feet
North	57°	26'	30"	West	10.54 feet
North	73°	01'	15"	West	37.09 feet
North	82°	18'	20"	West	47.87 feet
North	84°	10'	30"	West	22.47 feet
South	83°	01'	40"	West	22.16 feet
North	84°	54'	00"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius of 50.00 feet, connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly side of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a radius of 85.00 feet a distance of 185.47 feet,
 North 31° 57' 00" East 46.34 feet to a point of curve,
 easterly on a curve to the right having a radius of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point of curve,
 northerly on a curve to the left having a radius of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

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North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	26°	10'	25"	East	63.52 feet
North	22°	47'	50"	East	65.76 feet; and
North	31°	15'	05"	East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly of Davis;
thence along said last mentioned land the following twenty-five courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet
South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz;
running thence from said point of beginning, South 77° 21' 40" West 14.00 feet and
South 02° 32' 40" East 162.00 feet to the point of beginning,
said point of beginning being the northeasterly corner of the herein described parcel;
running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner;
thence South 83° 51' 20" West 104.32 feet to a corner;
thence North 02° 07' 40" West 142.92 feet to a corner; and
thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

The above-described parcel being also designated as (i) Lots

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No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a

WE PAY TAX
071454
REAL ESTATE TAX STATE OF
DEPT. OF REVENUE
1988.00
* * *

trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

YALE UNIVERSITY,

by

John E. Ecklund
Treasurer

Attest:

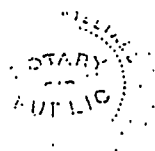
James F. Miller



STATE OF Connecticut }
COUNTY OF New Haven } ss.:

On the 13 day of March, 1973, before me personally came John E. Ecklund, to me known, who, being by me duly sworn, did depose and say that he resides at Cedar Road, Woodbridge, Connecticut, that he is Treasurer of YALE UNIVERSITY, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Governing Board of said corporation, and that he signed his name thereto by like order.

George F. Walker
Notary Public



STATE OF CONNECTICUT }
County of New Haven }
Office of County Clerk and }
Clerk of Superior Court }

HAROLD J. IVEY
I, EDWARD HORWITZ, Clerk of said County of New Haven and of the Superior Court in and for said County, the same being a Court of Record, having by law a seal hereby certify

That *George F. Williams*
whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was, at the time of taking such proof, acknowledgment or affidavit, a Notary Public, ~~Commissioner of the Superior Court, Justice of the Peace~~ within and for said County, residing in said County, duly appointed, commissioned and sworn, and authorized by the laws of said State to administer oaths, and take the solemn oaths and proofs of deeds or conveyances for lands, tenements and hereditaments, in said State, and other instruments to be recorded therein, and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person, and verily believe that the signature to the attached certificate is his true genuine signature and said certificate is well required to be under seal, and the person signing such certificate is well required by law to file in this office an impression of his ~~own~~ official seal; that I have compared the impression of the seal affixed thereto with the specimen impression thereof, filed or deposited in my office and that I believe the impression of the seal upon the original certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Superior Court, at New Haven, in said County and State, on the 26th day of *March*, 1973,
84928

Harold J. Ivey Clerk

BARGAIN AND SALE DEED
(Without Covenant Against
Grantor's Acts)

YALE UNIVERSITY

to

SEVEN SPRINGS FARM
CENTER, INC.

Dated: March 17, 1973

LIBER 7115 PAGE 603

The premises affected by the within instrument are located partially in the Towns of North Castle, New Castle and Bedford, County of Westchester and State of New York, and are also designated as Lots No. A43 and A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle, (ii) Lots No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle and (iii) Lots 4 and 4A, Section 22 on the Assessment Map of the Town of Bedford.

Record and Return to:

WISSIN + DANA
205 CHURCH STREET
NEW HAVEN, CONN. 06508
(ATT: MR. SCHENCK)

2150 B - CPa 00162 3-27-73

MAR 27 1973

SEARCHED	INDEXED
SERIALIZED	FILED
MAR 27 1973	
WESTCHESTER COUNTY CLERK'S OFFICE	
DIVISION OF LAND RECORDS	
Rec'd / Ex.	Filed / Ser.
Cross Ref'd	Cert / Recpt.
Town	Page
# 13221	Returned

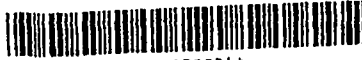
The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the TOWNS OF BEDFORD, NEW CASTLE & NORTH CASTLE County of Westchester, N. Y. A true copy of the original DEED

recorded MARCH 27, 1973 at 2:59 PM

EDWARD N. VETRANO, County Clerk.

E

8



000975024

LIBER 7245 PAGE 7

Noted N.Y.B.T.U. Form 800 - 12-73-20M-Dragon and Sid. Dev. with Consent of Miss Gramer's Att.-Incorporal or Corporation.

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 14th day of January, nineteen hundred and seventy-five

BETWEEN

HENRY J. HEINZ, II a/k/a H. J. HEINZ, II, residing at *P.O. Box 57
St. Albans, Pa. 15230*

party of the first part, and

SEVEN SPRINGS FARM CENTER, INC., with offices at Oregon Road,
R. D. #2, Mount Kisco, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of TEN AND 00/100 (\$10.00)

dollars

lawful money of the United States, and other good and valuable consideration, paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or
successors and assigns of the party of the second part forever.

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the Town of Bedford, County of Westchester and State of
New York bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Road where the same
is intersected by the southerly line of lands conveyed by H. J. Heinz, II
to Elizabeth Graham Weymouth by deed dated 8/21/72 recorded 8/29/72
in Liber 7077 cp 348, running thence along said lands of Elizabeth Graham
Weymouth the following courses and distances: South 71° 40' 20" East
173.64 feet to a point of curve, in a southerly direction, on a curve to the
right with a radius of 250 feet a distance of 304.81 feet, to a point of
tangency, South 1° 48' 50" East 53.82 feet, South 3° 08' 20" West 97.52
feet, South 4° 25' 30" West 73.76 feet, South 8° 12' 20" West 77.16 feet,
to a point of curve, in a southwesterly direction on a curve to the right
with a radius of 300 feet a distance of 196.17 feet to a point of tangency,
South 44° 54' 25" West 64.15 feet, South 38° 19' 40" West 34.41 feet to a
point of curve, in a southwesterly direction on a curve to the left with a
radius of 130 feet a distance of 64.42 feet, South 73° 24' 59" East
493.65 feet and North 77° 41' 50" East 675.31 feet to lands now or
formerly of the City of New York, thence along the same, South 9° 07' 30"
East 251.91 feet to lands now or formerly of Eugene Meyer, Jr., thence
along said lands now or formerly of Eugene Meyer, Jr. the following
courses and distances: South 77° 41' 50" West 382.30 feet, South 83°
44' 30" West 28.40 feet, South 80° 27' 40" West 114.21 feet, South 79°
04' 40" West 121.08 feet, South 76° 40' 40" West 97.84 feet, South 78°
29' 20" West 78.59 feet, South 77° 44' 20" West 303.46 feet, South 78°
40' 20" West 114.31 feet, South 77° 13' 10" West 79.23 feet, and North
18° 47' 40" West 616.16 feet to the easterly side of Oregon Road, thence
along the easterly side of Oregon Road part of the way along a stone wall
the following courses and distances: North 16° 31' 40" East 53.53 feet,
North 11° 48' 20" East 173.64 feet, North 13° 18' 20" East 101.89 feet,
North 14° 03' 00" East 31.05 feet, North 11° 48' 30" East 101.20 feet,
North 12° 06' 30" East 184.69 feet, North 11° 33' 40" East 115.58 feet, and
North 10° 46' 50" East 78.07 feet to the point and place of beginning.

(over)

00889

TAX STAMP ATTACHED - JUN 24 1975

TNC001212

Poor Quality

LIBER 7245 PAGE 8

Also known on the official tax map in the Town of Bedford as Section 22, Lot 6 & 6F.

SUBJECT TO:

A. Reservations contained in Liber 4846 cp 280, Liber 4927 cp 183

B. Private Lane Agreement recorded in Liber 2728 cp 194.

C. Easements for Delaware Aqueduct crossing premises.

D. Easement of right of way in favor of adjoining owners on the east over the 16 foot wide macadam driveway leading easterly and southerly from Oregon Road, as set forth in deed from Heinz to Weymouth dated August 23, 1972.

*OK in
Fluorid
woodland
1/23/72
probly*

~~E. Survey made by Fowler Engineering Corporation dated October 6, 1949 and last brought to date December 10, 1974.~~

TOGETHER WITH easement of right of way for ingress and egress over the 18 foot wide macadam driveway leading easterly and southerly from Oregon Road as set forth in deed from Heinz to Weymouth dated August 23, 1972. recorded in Liber 7097 p. 548 Weymouth

Cons. Clerk C. J. Jones

TNC001213

Poor
Quality

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:
Virginia Muncie

Henry J. Heinz, II
Henry J. Heinz, II
a/k/a J. J. Heinz, II

LINER 7245 PAGE 10

Pennsylvania Allegheny
STATE OF NEW YORK, COUNTY OF

On the 14th day of January 1975, before me personally came Henry J. Heinz, II a/k/a H. J. Heinz, II to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

STATE OF NEW YORK, COUNTY OF
On the _____ day of 19 _____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Rosemary A. Pettit
Notary Public
ROSEMARY A. PETTIT, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JULY 19, 1978
Member, Pennsylvania Society of Notary Publics

REAL ESTATE STATE OF NEW YORK
TRANSFER TAX
297.00

THE COMMONWEALTH OF PENNSYLVANIA } ss.
ALLEGHENY COUNTY

Clerk of Courts Form 24



I, ROBERT N. PRINCE JR., Clerk of the Court of Common Pleas (Criminal Division) and for the County of Allegheny, in the Commonwealth of Pennsylvania, the same being a Court of Law and Record, do by these presents certify that *Rosemary A. Pettit* before whom the foregoing was taken, and who has heretofore, in her own proper handwriting, subscribed her name, was at that time and is a Notary Public in and for said County of Allegheny, duly commissioned and sworn, and authorized by law of the Commonwealth of Pennsylvania to take affidavits and acknowledgments of deeds for lands and real estate in said Commonwealth of Pennsylvania, and to all whom acts as such due faith and credit are, and of right ought to be, given throughout the United States and elsewhere. And further, that I am acquainted with her handwriting, and verily believe the signature thereto to be her genuine signature.

I further certify that the foregoing was taken in accordance with the laws of the State of Pennsylvania. IN TESTIMONY WHEREOF, I have heretofore set my hand and affixed the seal of the Court, at Pittsburgh, Pa. 15 _____ day of _____ A. D. 19 75
Robert N. Prince Jr. Clerk

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACES
Title No. 65192

SECTION 22 LIBER 7245 PAGE 11
BLOCK
LOT 6 & 6F
TOWN of Bedford
County of Westchester

HENRY J. HEINZ, II,
a/k/a H. J. HEINZ, II
TO
SEVEN SPRINGS FARM
CENTER, INC.

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:



MARY B. GOODHUE, ESQ.
61 Smith Avenue
Mount Kisco, New York
Zip No. 10549

0 8 51 17 --- 22- 2-123 1-24-75 the Title Guarantee Company
RESERVE THIS SPACE FOR USE OF RECORDING OFFICE
CFP
CFP
2490

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate
in the TOWN OF BEDFORD
County of Westchester, N. Y. A true copy of the original DEED
recorded JAN. 24, 1975 at 11:42 AM
GEORGE R. MORROW, County Clerk.

F

CO1923

R06584145

INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 12th day of April, nineteen hundred and eighty-four BETWEEN Seven Springs Center, Inc., a New York not-for-profit corporation having an office in Mount Kisco, New York 10549,

party of the first part, and The Rockefeller University, a New York education corporation having an office at 1230 York Avenue, New York, New York 10021,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being ~~located~~ partially in the towns of Bedford, New Castle and North Castle, County of Westchester and State of New York, more particularly described in Exhibit A annexed to and made a part of this deed.

MAY 24 1984

Time

TAX STAMPS ATTACHED

1853 1908 025

TAX MAP DESIGNATION

Dist. Sec. Blk. Lot(s)

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, hereby covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

RECEIVED
REAL ESTATE
MAY 24 1984
TRANSFER TAX
WESTCHESTER
COUNTY

SEVEN SPRINGS CENTER, INC.

SEVEN SPRINGS CENTER INC
CORPORATE
SEAL
1979
NEW YORK

Linda Williams
Witness

By X *Denny Crowley*
Executive Vice President

1853 1908 025

"Seven Springs Farm"

PARGEL I

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallager: running thence from said point of beginning, along said last mentioned land, and continuing along land now or formerly of Roland, the following forty-two courses and distances:

North	55°	16'	30"	East	22.12 feet
North	62°	03'	30"	East	22.90 feet
North	71°	09'	30"	East	44.68 feet
North	71°	52'	50"	East	44.31 feet
North	75°	45'	30"	East	43.08 feet
North	63°	31'	30"	East	25.86 feet
North	62°	51'	10"	East	14.99 feet
North	70°	41'	20"	East	13.43 feet
North	48°	17'	10"	East	10.11 feet
North	66°	42'	50"	East	33.24 feet
North	89°	04'	40"	East	8.70 feet
North	68°	33'	00"	East	7.57 feet
North	76°	29'	50"	East	20.56 feet
North	61°	28'	10"	East	20.85 feet
North	65°	24'	00"	East	56.31 feet
North	75°	50'	50"	East	13.25 feet
North	65°	01'	10"	East	57.73 feet
North	77°	18'	25"	East	18.93 feet
South	80°	49'	50"	East	4.83 feet
North	79°	19'	30"	East	19.81 feet
North	84°	50'	45"	East	40.07 feet
South	80°	19'	00"	East	13.20 feet
North	81°	21'	50"	East	81.65 feet
South	75°	39'	50"	East	103.31 feet
North	33°	43'	10"	East	80.29 feet
South	89°	41'	15"	East	300.86 feet
North	73°	00'	05"	East	30.75 feet
North	78°	02'	10"	East	38.46 feet
North	70°	54'	15"	East	33.00 feet
North	66°	36'	55"	East	40.80 feet
North	78°	30'	45"	East	12.56 feet
North	59°	02'	00"	East	7.62 feet
North	79°	58'	00"	East	33.38 feet
North	51°	31'	45"	East	28.46 feet
North	56°	01'	00"	East	45.90 feet
North	39°	16'	00"	East	58.93 feet
North	36°	20'	20"	East	38.63 feet
North	42°	27'	40"	East	32.51 feet
North	43°	19'	10"	East	35.59 feet
North	48°	55'	15"	East	123.19 feet
North	47°	22'	00"	East	114.00 feet, and
North	49°	43'	25"	East	87.25 feet

to the northwesterly corner of land now or formerly of Glueck;

thence along said last mentioned land the following three courses and distances:

South	09°	44'	20"	East	70.81 feet
South	13°	05'	50"	East	28.19 feet, and
South	08°	58'	00"	East	70.24 feet

to the northerly side of Oregon Road in the Town of Bedford; thence along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle southwesterly, northwesterly and southwesterly, and partially along a stone wall, the following twenty-four courses and distances:

South	56°	56'	00"	West	123.00 feet
South	50°	48'	00"	West	78.00 feet
South	27°	44'	10"	West	66.55 feet
South	34°	12'	20"	West	10.46 feet
South	24°	31'	10"	West	47.98 feet
South	18°	32'	15"	West	72.38 feet
South	16°	08'	00"	West	104.40 feet
South	18°	35'	45"	West	16.90 feet
South	18°	59'	20"	West	34.70 feet
North	70°	35'	00"	West	20.01 feet
South	19°	25'	00"	West	185.02 feet

to a point of curve, southwesterly on a curve to the right having a radius of 165.00 feet a distance of 136.12 feet

South	66°	41'	00"	West	138.42 feet
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to a point of curve, southwesterly on a curve to the left having a radius of 110.00 feet a distance of 66.68 feet

South	31°	57'	00"	West	46.34 feet
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to a point of curve, northwesterly on a curve to the right having a radius of 35.00 feet a distance of 76.37 feet

North	23°	02'	00"	West	29.00 feet
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North 45° 22' 00" West 70.87 feet

to a point of curve, westerly on a curve to the left having a radius of 50.00 feet a distance of 70.02 feet

South	54°	24'	00"	West	59.87 feet
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South	58°	22'	00"	West	63.00 feet
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South	67°	36'	00"	West	167.90 feet
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to a point of curve, southerly on a curve to the left having a radius of 50.00 feet a distance of 52.71 feet

South	07°	12'	00"	West	114.78 feet
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to a point of curve;

thence southwesterly on a curve to the right having a radius of 50.00 feet, connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;

thence westerly along the northerly side of Oregon Road in the Town of New Castle, the following five courses and distances:

South	81°	50'	00"	West	238.89 feet
North	85°	02'	00"	West	70.00 feet
South	83°	49'	50"	West	102.94 feet
South	85°	57'	50"	West	4.83 feet, and
North	53°	07'	20"	West	15.41 feet

to a point on the easterly side of Woodside Road;
thence northerly along the easterly side of Woodside Road the
following twenty-three courses and distances:

North	16°	04'	10"	West	11.34 feet
North	03°	30'	10"	West	70.19 feet
North	01°	13'	40"	East	14.92 feet
North	24°	21'	30"	East	22.31 feet
North	09°	59'	20"	West	12.85 feet
North	17°	23'	30"	West	17.20 feet
North	32°	53'	50"	East	37.34 feet
North	17°	46'	50"	East	56.16 feet
North	13°	36'	50"	East	31.95 feet
North	02°	31'	10"	East	20.02 feet
North	17°	43'	50"	East	63.97 feet
North	02°	26'	30"	West	46.26 feet
North	06°	35'	30"	West	43.99 feet
North	17°	56'	30"	West	27.92 feet
North	08°	59'	05"	West	21.90 feet
North	27°	02'	20"	West	16.19 feet
North	09°	58'	35"	West	19.05 feet
North	18°	21'	00"	West	27.57 feet
North	26°	49'	10"	West	6.05 feet
North	37°	06'	00"	West	11.42 feet
North	45°	59'	40"	West	28.51 feet
North	48°	25'	05"	West	21.23 feet, and
North	48°	52'	40"	West	35.75 feet

to the aforesaid land now or formerly of Gallager, the point
or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING at the point on the northerly side of Oregon Road where
the same is intersected by the boundary line between the Town of
New Castle and the Town of Bedford; thence running along said
boundary line North 10° 08' 51" West 180.16 feet to lands
now or formerly of Rolf R. Roland; thence turning and running
along said lands and along a stone wall the following courses
and distances: North 51° 53' 15" East 93.75 feet; North
50° 20' East 114.00 and North 52° 41' 25" East 87.25 feet
to lands now or formerly of Richard M. & Joyce S. Glueck; thence
turning and running along said lands and along a stone wall the
following courses and distances: South 6° 46' 20" East 70.81
feet; South 10° 07' 50" East 28.19 feet and South 6° 00'
East 70.24 feet to the northerly side of Oregon Road; thence
turning and running along said northerly side of Oregon Road the
following courses and distances: South 59° 54' West 123.00
feet; South 53° 46' West 78.00 feet; South 30° 42' 10"
West 66.55 feet; South 37° 10' 20" West 10.46 feet and South
27° 29' 10" West 22.08 feet to the point and place of BEGINNING.

"Seven Springs Farm"

LIBER 7923 PAGE 643

SUBJECT TO state of facts shown on survey prepared by Alexander Bunnéy dated June 23, 1975.

The above-described parcel being also designated as (i) Lot No. A43, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (ii) Lot No. 4A, Section 22 on the Assessment Map of the Town of Bedford.

PARCEL II

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis; running thence northeasterly from said point of beginning, along the southerly side of Oregon Road in the Town of Bedford, the following twelve courses and distances:

North	59°	28'	05"	East	24.06 feet
North	59°	37'	40"	East	111.07 feet
North	59°	36'	10"	East	82.49 feet
North	61°	51'	55"	East	64.17 feet
North	61°	52'	05"	East	137.88 feet
North	61°	19'	40"	East	30.78 feet
North	61°	23'	20"	East	38.07 feet
North	62°	13'	50"	East	20.84 feet
North	62°	06'	50"	East	90.37 feet
North	62°	05'	45"	East	97.99 feet
North	61°	06'	20"	East	119.52 feet, and
North	59°	19'	50"	East	101.38

to the westerly line of land now or formerly of Heinz; thence along said last mentioned land, South 18° 39' 30" East 571.16 feet to a corner; thence continuing along said last mentioned land, North 77° 21' 20" East 11.51 feet to a monument; thence continuing along said last mentioned land and partially along a stone wall the following nine courses and distances:

North	77°	21'	20"	East	67.72 feet
North	78°	48'	30"	East	114.31 feet
North	77°	52'	30"	East	303.46 feet
North	78°	37'	30"	East	78.59 feet
North	76°	48'	50"	East	97.84 feet
North	79°	12'	50"	East	121.08 feet
North	80°	35'	50"	East	114.21 feet
North	83°	52'	40"	East	28.40 feet, and
North	77°	50'	00"	East	382.30 feet

to the westerly boundary of the Village of Mount Kisco; thence along the westerly boundary of the Village of Mount Kisco, the following fourteen courses and distances:

South	08°	53'	40"	East	693.23 feet
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"Seven Springs Farm"

LIBER 7923 PAGE 644

South	79°	12'	20"	West	227.80 feet
South	17°	32'	40"	East	147.00 feet
South	05°	58'	40"	East	280.00 feet
South	30°	16'	20"	West	242.00 feet
South	10°	52'	40"	East	117.00 feet
South	09°	45'	20"	West	105.00 feet
South	35°	20'	40"	East	188.00 feet
South	12°	29'	40"	East	227.00 feet
South	11°	44'	20"	West	97.00 feet
South	05°	48'	40"	East	108.00 feet
South	21°	16'	20"	West	164.00 feet
South	04°	21'	40"	East	180.00 feet, and
South	03°	29'	20"	West	131.00 feet

to a point and other land owned by Eugene and Agnes E. Meyer Foundation;

thence along said last mentioned land the following twelve courses and distances:

South	89°	33'	30"	West	418.17 feet
North	84°	02'	25"	West	140.33 feet
South	70°	48'	05"	West	77.82 feet
South	57°	03'	20"	West	135.72 feet
South	18°	21'	20"	West	835.19 feet
South	82°	27'	20"	West	219.14 feet
South	57°	47'	30"	West	196.34 feet
North	84°	08'	25"	West	319.91 feet
North	81°	37'	15"	West	22.17 feet
North	83°	39'	35"	West	66.92 feet
North	86°	37'	10"	West	28.66 feet, and
North	84°	18'	40"	West	243.31 feet

to the easterly side of Oregon Road in the Town of North Castle, thence northerly and westerly, along the easterly and northerly side of Oregon Road, the following eighty-six courses and distances:

North	20°	28'	30"	East	9.06 feet
North	25°	43'	10"	East	18.20 feet
North	17°	31'	00"	East	37.48 feet
North	12°	12'	20"	East	41.44 feet
North	12°	03'	20"	East	49.07 feet
North	08°	54'	10"	East	24.23 feet
North	00°	45'	25"	East	53.73 feet
North	00°	00'	50"	East	37.94 feet
North	74°	59'	50"	East	2.59 feet
North	13°	48'	10"	West	24.94 feet
North	08°	26'	25"	West	29.77 feet
North	08°	09'	10"	West	38.85 feet
North	01°	13'	00"	West	16.00 feet
North	10°	54'	50"	East	128.81 feet
North	03°	01'	20"	West	12.90 feet
North	02°	45'	50"	East	102.66 feet
North	01°	03'	20"	East	72.67 feet
North	04°	23'	00"	East	50.25 feet
North	03°	02'	40"	East	39.72 feet
North	07°	53'	55"	West	9.10 feet
North	07°	55'	30"	East	13.49 feet

SEVEN SPINES FARM

North	61°	13'	00"	West	36.64 feet
North	61°	08'	50"	West	80.86 feet
North	62°	53'	20"	West	41.74 feet
North	61°	23'	20"	West	54.34 feet
North	51°	42'	35"	West	4.12 feet
North	64°	58'	50"	West	47.10 feet
North	80°	35'	00"	West	34.72 feet
North	86°	09'	30"	West	54.62 feet
North	56°	30'	10"	West	3.30 feet
South	66°	58'	10"	West	5.80 feet
South	87°	15'	10"	West	23.16 feet
North	17°	51'	00"	West	22.64 feet
North	04°	06'	10"	West	15.10 feet
North	22°	26'	50"	West	30.77 feet
North	38°	41'	00"	West	7.90 feet
North	25°	28'	50"	West	13.95 feet
North	32°	45'	30"	West	38.35 feet
North	47°	05'	20"	West	21.53 feet
North	26°	02'	40"	West	39.47 feet
North	56°	15'	20"	West	11.92 feet
North	32°	26'	20"	West	23.73 feet
North	27°	25'	50"	West	57.96 feet
North	36°	18'	25"	West	114.20 feet
North	27°	43'	30"	West	45.93 feet
North	18°	11'	00"	West	74.61 feet
North	37°	26'	10"	West	12.57 feet
North	19°	59'	45"	West	22.87 feet
North	12°	18'	50"	West	14.11 feet
North	24°	11'	40"	West	20.33 feet
North	16°	06'	45"	West	16.47 feet
North	00°	22'	45"	East	18.12 feet
North	13°	02'	40"	West	27.78 feet
North	07°	25'	45"	West	45.32 feet
North	12°	51'	50"	West	24.30 feet
North	00°	07'	00"	West	14.83 feet
North	15°	09'	40"	West	49.17 feet
North	32°	13'	50"	West	39.54 feet
North	30°	20'	40"	West	43.29 feet
North	20°	51'	55"	West	25.58 feet
North	02°	49'	30"	West	15.83 feet
North	29°	58'	50"	West	15.46 feet
North	08°	12'	35"	West	12.18 feet
North	29°	28'	20"	West	17.01 feet
North	16°	45'	00"	West	17.31 feet
North	09°	34'	20"	West	28.32 feet
North	13°	48'	20"	West	36.16 feet
North	03°	45'	40"	East	12.35 feet
North	15°	01'	55"	West	46.88 feet
North	29°	21'	00"	West	53.50 feet
North	23°	46'	40"	West	17.29 feet
North	37°	32'	30"	West	14.49 feet
North	49°	15'	20"	West	44.49 feet
North	71°	28'	20"	West	11.64 feet
North	57°	26'	30"	West	10.54 feet
North	73°	01'	15"	West	37.09 feet
North	82°	18'	20"	West	47.87 feet
North	84°	10'	30"	West	22.47 feet
South	83°	01'	40"	West	22.16 feet

North	84°	54'	00"	West	17.10 feet
South	86°	06'	00"	West	27.49 feet
North	81°	44'	10"	West	153.53 feet
North	79°	42'	00"	West	134.00 feet
North	84°	39'	00"	West	43.00 feet
North	89°	32'	00"	West	114.00 feet, and
North	71°	22'	00"	West	85.00 feet

to a point of curve;
 thence northeasterly on a curve to the right having a radius
 of 50.00 feet, connecting the northeasterly side of Oregon Road
 and the southeasterly side of Lower Byram Lake Road, a distance
 of 68.56 feet to a point on the southeasterly side of Lower
 Byram Lake Road;
 thence northerly, northeasterly, southeasterly and northeasterly
 along the easterly and southerly side of Lower Byram Lake Road
 in the Town of New Castle and continuing along Oregon Road in the
 Town of Bedford, the following twelve courses and distances:

North	07°	12'	00"	East	134.10 feet
North	67°	36'	00"	East	171.94 feet
North	58°	22'	00"	East	68.77 feet
North	54°	24'	00"	East	61.60 feet
South	45°	22'	00"	East	61.00 feet
South	23°	02'	00"	East	19.13 feet

to a point of curve,
 northeasterly on a curve to the left having a
 radius of 85.00 feet a distance of 185.47 feet,
 North 31° 57' 00" East 46.34 feet to a point
 of curve,
 easterly on a curve to the right having a radius
 of 60.00 feet a distance of 36.37 feet,
 North 66° 41' 00" East 138.42 feet to a point
 of curve,
 northerly on a curve to the left having a radius
 of 215.00 feet a distance of 170.59 feet
 North 68° 46' 40" West 10.74 feet

North	29°	31'	00"	East	13.38 feet
North	25°	41'	40"	East	43.31 feet
North	19°	05'	15"	East	15.26 feet
North	16°	07'	45"	East	224.55 feet
North	18°	19'	50"	East	34.60 feet
North	26°	10'	25"	East	63.52 feet
North	22°	47'	50"	East	65.76 feet, and
North	31°	15'	05"	East	23.92 feet

to the northwesterly corner of the aforesaid land now or formerly
 of Davis;
 thence along said last mentioned land the following twenty-five
 courses and distances:

South	34°	56'	00"	East	192.00 feet
South	31°	33'	00"	East	59.52 feet
South	08°	31'	00"	East	171.26 feet
South	01°	09'	00"	East	135.20 feet
South	05°	33'	00"	West	40.46 feet

South	11°	52'	00"	West	49.65 feet
South	07°	24'	00"	West	19.14 feet
South	13°	08'	29"	West	88.58 feet
South	66°	36'	00"	East	26.85 feet
South	71°	10'	00"	East	14.57 feet
South	56°	16'	00"	East	27.84 feet
South	24°	05'	00"	East	6.77 feet
South	49°	43'	00"	East	6.55 feet
South	71°	15'	00"	East	25.54 feet
North	89°	31'	00"	East	25.62 feet
North	28°	36'	00"	East	70.39 feet
North	69°	20'	00"	East	89.16 feet
North	76°	50'	00"	East	59.96 feet
North	86°	51'	00"	East	16.51 feet
North	81°	27'	00"	East	42.48 feet
North	78°	13'	52"	East	121.74 feet
North	10°	45'	22"	West	242.59 feet
North	14°	47'	20"	West	42.12 feet
North	10°	37'	41"	West	179.17 feet, and
North	12°	08'	58"	West	474.81 feet

to the southerly side of Oregon Road in the Town of Bedford; the point or place of BEGINNING.

EXCEPTING THEREOUT AND THEREFROM the following described premises:

BEGINNING a point being the southwesterly corner of the aforesaid land now or formerly of Heinz; running thence from said point of beginning, South 77° 21' 20" West 14.00 feet and South 02° 32' 40" East 162.00 feet to the point of beginning, said point of beginning being the northeasterly corner of the herein described parcel; running thence from said point of beginning, South 02° 17' 40" East 142.32 feet to a corner; thence South 83° 51' 20" West 104.32 feet to a corner; thence North 02° 07' 40" West 142.92 feet to a corner; and thence North 84° 10' 20" East 103.86 feet to the point or place of BEGINNING.

FURTHER EXCEPTING THEREOUT AND THEREFROM the following described premi

BEGINNING at the point on the southerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford; thence running along said southerly side of Oregon Road North 25° 45' 50" East 54.47 feet and North 34° 13' 05" East 23.92 feet to lands of the party of the second part; thence turning and running along said lands the following courses and distanc

South	31°	58'	00"	East	192.00 feet
South	28°	35'	00"	East	59.52 feet
South	05°	33'	00"	East	171.26 feet
South	01°	49'	00"	West	135.20 feet
South	08°	31'	00"	West	40.46 feet
South	14°	50'	00"	West	49.65 feet
South	10°	22'	00"	West	19.14 feet, and
South	16°	06'	29"	West	88.58 feet

Seven S. 11. 7928-648

to the southwesterly corner of said lands of the party of the second part; thence turning and running through lands of the party of the first part North $63^{\circ} 38' 00''$ West 21.52 feet to a point in the boundary line between the Town of New Castle and the Town of Bedford; thence turning and running along said boundary line North $10^{\circ} 08' 51''$ West 644.36 feet to the point and place of BEGINNING.

SUBJECT TO state of facts shown on survey prepared by Alexander Bunney dated June 23, 1975.

The above-described parcel being also designated as (i) Lots No. 1 and 2 (p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot No. A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot No. 4, Section 22 on the Assessment Map of the Town of Bedford.

"Nonsuch"

PARCEL III

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,

lying and being in the Town of Bedford, County of Westchester and State of New York bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Road where the same is intersected by the southerly line of lands conveyed by H. J. Heinz, II to Elizabeth Graham Weymouth by deed dated 8/21/72 recorded 8/29/72 in Liber 7077 cp 348, running thence along said lands of Elizabeth Graham Weymouth the following courses and distances:

South 71° 40' 20" East 173.64 feet

to a point of curve, in a southerly direction, on a curve to the right with a radius of 250 feet a distance of 304.81 feet, to a point of tangency,

South	1°	48'	50"	East	53.82 feet
South	3°	08'	20"	West	97.52 feet
South	4°	25'	30"	West	73.76 feet, and
South	8°	12'	20"	West	77.16 feet

to a point of curve, in a southwesterly direction on a curve to the right with a radius of 300 feet a distance of 196.17 feet to a point of tangency,

South	44°	54'	25"	West	64.15 feet
South	38°	19'	40"	West	34.41 feet

to a point of curve, in a southwesterly direction on a curve to the left with a radius of 130 feet a distance of 64.42 feet,

South	73°	24'	59"	East	493.65 feet
North	77°	41'	50"	East	675.31 feet

to lands now or formerly of the City of New York, thence along the same,

South 9° 07' 30" East 251.91 feet

to lands now or formerly of Eugene Meyer, Jr., thence along said land now or formerly of Eugene Meyer, Jr. the following courses and distar

South	77°	41'	50"	West	382.30 feet
South	83°	44'	30"	West	28.40 feet
South	80°	27'	40"	West	114.21 feet
South	79°	04'	40"	West	121.08 feet
South	76°	40'	40"	West	97.84 feet
South	78°	29'	20"	West	78.59 feet
South	77°	44'	20"	West	303.46 feet
South	78°	40'	20"	West	114.31 feet
South	77°	13'	10"	West	79.23 feet, and
North	18°	47'	40"	West	616.16 feet

to the easterly side of Oregon Road, thence along the easterly side of Oregon Road part of the way along a stone wall the following courses and distances:

North	16°	31'	40"	East	53.53 feet
North	11°	48'	20"	East	173.64 feet
North	13°	18'	20"	East	101.89 feet
North	14°	03'	00"	East	31.05 feet
North	11°	48'	30"	East	101.20 feet
North	12°	06'	30"	East	184.69 feet
North	11°	33'	40"	East	115.58 feet, and
North	10°	46'	50"	East	78.07 feet

to the point and place of beginning.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

LIBER 7923 PAGE 651

On the _____ day of _____ 19____, before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

Connecticut
STATE OF NEW YORK, COUNTY OF New Haven

On the 12 day of April 1984, before me personally came Henry Chauncey, Jr.

to me known, who, being by me duly sworn, did depose and say that he resides at No. 295 Greene Street, New Haven, Connecticut 06511; that he is the Executive Vice President of Seven Springs Center, Inc.

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

MARY M. BRAINARD
Notary Public
My Commission Expires March 31, 1988

652

Quitclaim Deed

TITLE No. Acq-5740

SEVEN SPRINGS CENTER, INC.

TO

THE ROCKEFELLER UNIVERSITY

SECTION
BLOCK
LOT
COUNTY OR TOWN
TAX BILLING ADDRESS

Recorded At Request of The Title Guarantee Company

RETURN BY MAIL TO:

Squire N. Bozorth, Esq.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

Zip No.



3 Towns

114

29988

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

00*96

WESTCHESTER COUNTY CLERK
The Title Guarantee Company

RECEIVED
WESTCHESTER COUNTY CLERK

MAY 24 12 47 PM '34

SEARCHED	INDEXED
SERIALIZED	FILED
MAY 24 1934	
WESTCHESTER COUNTY CLERK'S OFFICE	

3
8475-2065
Returned

The foregoing instrument was endorsed for record as follows:
The property affected by this instrument is situate in the
Towns of Bedford, Mt. Kisco, North Castle
County of Westchester, N. Y. A True copy of the original

Deed
recorded in the Division of Land Records of the County Clerk's
Office of Westchester County on *May 24, 1934*
at *12:47 PM* in Liber *7923* Page *639* of Deeds.

Witness my hand and Official Seal

Andrew J. Spano
Andrew J. Spano
County Clerk

G

T/BEDFORD
T/NEW CASTLE
T/NORTH CASTLE

24P
T-2,221
24

THIS INDENTURE, made the 22nd day of December nineteen hundred and ninety-five between THE ROCKEFELLER UNIVERSITY, a New York education corporation having an address at 1230 York Avenue, New York, New York 10021 ("Grantor") and SEVEN SPRINGS, LLC, a New York limited liability company, having an address c/o The Trump Organization 725 Fifth Avenue, New York, New York 10022 ("Grantee");

STAT
6 25
016

W I T N E S S E T H:

WHEREAS, Grantor, in consideration of Ten Dollars and other valuable consideration paid by Grantee, does hereby grant and release unto Grantee, the heirs, successors and assigns of Grantee forever,

ALL that certain parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Towns of New Castle, North Castle and Bedford, Westchester County, New York and more particularly described on Schedule A attached hereto and made a part hereof (the "Premises");

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the Premises to the centerlines thereof;

TOGETHER with the appurtenances and all the estate and rights of Grantor in and to the Premises;

TO HAVE AND TO HOLD the Premises unto Grantee, the heirs, successors and assigns of Grantee forever.

AND Grantor covenants that Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the Grantor has duly executed this Indenture the day and year first above written.

THE ROCKEFELLER UNIVERSITY

By: David J. Lyons
David J. Lyons
Vice President

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On the 22nd day of December 1995, before me personally came David J. Lyons to me known, who, being by me duly sworn, did depose and say that he resides at 262 Coleridge Street, Brooklyn, New York 11235; that he is a Vice President of THE ROCKEFELLER UNIVERSITY, the education corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

Elliot Arocho

Notary Public

My commission expires: 10/23/97

ELLIOT AROCHO
Notary Public, State of New York
No. 01AR5050948
Qualified in Bronx County
Certificate Filed in Bronx County
Commission Expires October 23, 1997

DESCRIPTION - SCHEDULE A

PARCEL 1

All that certain plot, piece of parcel of land, situate, lying and being partly in the Town of New Castle and partly in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Woodside Road where the same is intersected by the southwesterly corner of land now or formerly of Gallagher;

RUNNING THENCE from said point of beginning along said last mentioned land and continuing along land now or formerly of Roland, the following 42 courses and distances:

- (1) North 55 degrees 16 minutes 30 seconds East 22.12 feet;
- (2) North 62 degrees 03 minutes 30 seconds East 22.90 feet;
- (3) North 71 degrees 09 minutes 30 seconds East 44.68 feet;
- (4) North 71 degrees 52 minutes 50 seconds East 44.31 feet;
- (5) North 75 degrees 45 minutes 30 seconds East 43.08 feet;
- (6) North 63 degrees 31 minutes 30 seconds East 25.86 feet;
- (7) North 62 degrees 51 minutes 10 seconds East 14.99 feet;
- (8) North 70 degrees 41 minutes 20 seconds East 13.43 feet;
- (9) North 48 degrees 17 minutes 10 seconds East 10.11 feet;
- (10) North 66 degrees 42 minutes 50 seconds East 33.24 feet;
- (11) North 89 degrees 04 minutes 40 seconds East 8.70 feet;
- (12) North 68 degrees 33 minutes 00 seconds East 7.57 feet;
- (13) North 76 degrees 29 minutes 50 seconds East 20.56 feet;
- (14) North 61 degrees 28 minutes 10 seconds East 20.85 feet;
- (15) North 65 degrees 24 minutes 00 seconds East 56.31 feet;
- (16) North 75 degrees 50 minutes 50 seconds East 13.25 feet;
- (17) North 65 degrees 01 minutes 10 seconds East 57.73 feet;
- (18) North 77 degrees 18 minutes 25 seconds East 18.93 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (19) South 80 degrees 49 minutes 50 seconds East 4.83 feet;
- 20) North 79 degrees 19 minutes 30 seconds East 19.31 feet;
- (21) North 84 degrees 50 minutes 45 seconds East 40.07 feet;
- (22) South 80 degrees 19 minutes 00 seconds East 13.20 feet;
- (23) North 81 degrees 21 minutes 50 seconds East 81.65 feet;
- (24) South 75 degrees 39 minutes 50 seconds East 103.31 feet;
- (25) North 33 degrees 43 minutes 10 seconds East 80.29 feet;
- (26) South 89 degrees 41 minutes 15 seconds East 300.86 feet;
- (27) North 73 degrees 00 minutes 05 seconds East 30.75 feet;
- (28) North 78 degrees 02 minutes 10 seconds East 38.46 feet;
- (29) North 70 degrees 54 minutes 15 seconds East 33.00 feet;
- (30) North 66 degrees 36 minutes 55 seconds East 40.80 feet;
- (31) North 78 degrees 30 minutes 45 seconds East 12.56 feet;
- (32) North 59 degrees 02 minutes 00 seconds East 7.62 feet;
- (33) North 79 degrees 58 minutes 00 seconds East 33.38 feet;
- (34) North 51 degrees 31 minutes 45 seconds East 28.46 feet;
- (35) North 56 degrees 01 minutes 00 seconds East 45.90 feet;
- (36) North 39 degrees 16 minutes 00 seconds East 58.93 feet;
- (37) North 36 degrees 20 minutes 20 seconds East 38.63 feet;
- (38) North 42 degrees 27 minutes 40 seconds East 32.51 feet;
- (39) North 43 degrees 19 minutes 10 seconds East 35.59 feet;
- (40) North 48 degrees 55 minutes 15 seconds East 123.19 feet;
- (41) North 47 degrees 22 minutes 00 seconds East 114.00 feet; and
- (42) North 49 degrees 43 minutes 25 seconds East 87.25 feet to the northwesterly corner of land now or formerly of Glueck;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE along said last mentioned land, the following 3 courses and distances:

- (1) South 09 degrees 44 minutes 20 seconds East 70.81 feet;
- (2) South 13 degrees 05 minutes 50 seconds East 28.19 feet; and
- (3) South 08 degrees 58 minutes 00 seconds East 70.24 feet to the northerly side of Oregon Road in the Town of Bedford;

THENCE along the northerly side of Oregon Road in the Town of Bedford and continuing along the northerly side of Lower Byram Lake Road in the Town of New Castle, southwesterly, northwesterly and southwesterly and partially along a stone wall, the following 24 courses and distances:

- (1) South 56 degrees 56 minutes 00 seconds West 123.00 feet;
- (2) South 50 degrees 48 minutes 00 seconds West 78.00 feet;
- (3) South 27 degrees 44 minutes 10 seconds West 66.55 feet;
- (4) South 34 degrees 12 minutes 20 seconds West 10.46 feet;
- (5) South 24 degrees 31 minutes 10 seconds West 47.98 feet;
- (6) South 18 degrees 32 minutes 15 seconds West 72.38 feet;
- (7) South 16 degrees 08 minutes 00 seconds West 104.40 feet;
- (8) South 18 degrees 35 minutes 45 seconds West 16.90 feet;
- (9) South 18 degrees 59 minutes 20 seconds West 34.70 feet;
- (10) North 70 degrees 35 minutes 00 seconds West 20.01 feet;
- (11) South 19 degrees 25 minutes 00 seconds West 185.02 feet to a point of curve;
- (12) Southwesterly on a curve to the right having a radius of 165.00 feet, a distance of 136.12 feet;
- (13) South 66 degrees 41 minutes 00 seconds West 138.42 feet to a point of curve;
- (14) Southwesterly on a curve to the left having a radius of 110.00 feet, a distance of 66.68 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (15) South 31 degrees 57 minutes 00 seconds West 45.34 feet to a point of curve;
- (16) Northwesterly on a curve to the right having a radius of 35.00 feet, a distance of 76.37 feet;
- (17) North 23 degrees 02 minutes 00 seconds West 29.00 feet;
- (18) North 45 degrees 22 minutes 00 seconds West 70.87 feet to a point of curve;
- (19) Westerly on a curve to the left having a radius of 50.00 feet, a distance of 70.02 feet;
- (20) South 54 degrees 24 minutes 00 seconds West 59.87 feet;
- (21) South 58 degrees 22 minutes 00 seconds West 63.00 feet;
- (22) South 67 degrees 36 minutes 00 seconds West 167.90 feet to a point of curve;
- (23) Southerly on a curve to the left having a radius of 50.00 feet, a distance of 52.71 feet; and
- (24) South 07 degrees 12 minutes 00 seconds West 114.78 feet to a point of curve;

THENCE southwesterly on a curve to the right having a radius of 50.00 feet connecting the northerly side of Oregon Road in the Town of New Castle and the northwesterly side of Lower Byram Lake Road, a distance of 65.13 feet to a point on the northerly side of Oregon Road in the Town of New Castle;

THENCE westerly along the northerly side of Oregon Road in the Town of New Castle, the following 5 courses and distances:

- (1) South 81 degrees 50 minutes 00 seconds West 238.89 feet;
- (2) North 85 degrees 02 minutes 00 seconds West 70.00 feet;
- (3) South 83 degrees 49 minutes 50 seconds West 102.94 feet;
- (4) South 85 degrees 57 minutes 50 seconds West 4.83 feet; and
- (5) North 53 degrees 07 minutes 20 seconds West 15.41 feet to a point on the easterly side of Woodside Road;

DESCRIPTION - SCHEDULE A - CONTINUED

TRENCE northerly along the easterly side of Woodside Road, the following 23 courses and distances:

- (1) North 16 degrees 04 minutes 10 seconds West 11.34 feet;
- (2) North 63 degrees 30 minutes 10 seconds West 70.19 feet;
- (3) North 01 degrees 13 minutes 40 seconds East 14.92 feet;
- (4) North 24 degrees 21 minutes 30 seconds East 22.31 feet;
- (5) North 09 degrees 59 minutes 20 seconds West 12.85 feet;
- (6) North 17 degrees 23 minutes 30 seconds West 17.20 feet;
- (7) North 32 degrees 53 minutes 50 seconds East 37.34 feet;
- (8) North 17 degrees 46 minutes 50 seconds East 56.16 feet;
- (9) North 13 degrees 36 minutes 50 seconds East 31.95 feet;
- (10) North 02 degrees 31 minutes 10 seconds East 20.02 feet;
- (11) North 17 degrees 43 minutes 50 seconds East 63.97 feet;
- (12) North 02 degrees 26 minutes 30 seconds West 46.26 feet;
- (13) North 06 degrees 35 minutes 30 seconds West 43.99 feet;
- (14) North 17 degrees 56 minutes 30 seconds West 27.92 feet;
- (15) North 08 degrees 59 minutes 05 seconds West 21.90 feet;
- (16) North 27 degrees 02 minutes 20 seconds West 16.19 feet;
- (17) North 09 degrees 58 minutes 35 seconds West 19.05 feet;
- (18) North 18 degrees 21 minutes 00 seconds West 27.57 feet;
- (19) North 26 degrees 49 minutes 10 seconds West 6.05 feet;
- (20) North 37 degrees 06 minutes 00 seconds West 11.42 feet;
- (21) North 45 degrees 59 minutes 40 seconds West 28.51 feet;
- (22) North 48 degrees 25 minutes 05 seconds West 21.23 feet; and
- (23) North 48 degrees 52 minutes 40 seconds West 35.75 feet to the aforesaid land now or formerly of Gallager, the point or place of BEGINNING.

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

EXCEPTING THEREOUT AND THEREFROM the following premises, described as "Parcel II" in Deed made by Seven Springs Farm Center, Inc. to John S. Mazella and E. Patricia Mazella, his wife, dated February 6, 1976, recorded February 9, 1976 in Liber 7312 sp 521:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the point on the northerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford;

THENCE RUNNING along said boundary line, North 10 degrees 08 minutes 51 seconds West 180.16 feet to lands now or formerly of Rolf R. Roland;

THENCE TURNING AND RUNNING along said lands and along a stone wall, the following 3 courses and distances:

- (1) North 51 degrees 53 minutes 15 seconds East 93.75 feet;
- (2) North 50 degrees 20 minutes 00 seconds East 114.00 feet; and
- (3) North 52 degrees 41 minutes 25 seconds East 87.25 feet to lands now or formerly of Richard M. and Joyce S. Glueck;

THENCE TURNING AND RUNNING along said lands and along a stone wall, the following 3 courses and distances:

- (1) South 06 degrees 46 minutes 20 seconds East 70.81 feet;
- (2) South 10 degrees 07 minutes 50 seconds East 28.19 feet; and
- (3) South 06 degrees 00 minutes 00 seconds East 70.24 feet to the northerly side of Oregon Road;

THENCE TURNING AND RUNNING along said northerly side of Oregon Road, the following 5 courses and distances:

- (1) South 59 degrees 54 minutes 00 seconds West 123.00 feet;
- (2) South 53 degrees 46 minutes 00 seconds West 78.00 feet;
- (3) South 30 degrees 42 minutes 10 seconds West 66.55 feet;
- (4) South 37 degrees 10 minutes 20 seconds West 10.46 feet; and
- (5) South 27 degrees 29 minutes 10 seconds West 22.08 feet to the point and place of BEGINNING.

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

PARCEL 2

All that certain plot, piece or parcel of land, situate, lying and being partly in the Town of Bedford, partly in the Town of North Castle and partly in the Town of New Castle, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Oregon Road in the Town of Bedford where the same is intersected by the dividing line between the premises herein described and the northeasterly corner of land now or formerly of Davis;

RUNNING THENCE northeasterly from said point of beginning along the southerly side of Oregon Road in the Town of Bedford, the following 12 courses and distances:

- (1) North 59 degrees 28 minutes 05 seconds East 24.06 feet;
- (2) North 59 degrees 37 minutes 40 seconds East 111.07 feet;
- (3) North 59 degrees 36 minutes 10 seconds East 82.49 feet;
- (4) North 61 degrees 51 minutes 55 seconds East 64.17 feet;
- (5) North 61 degrees 52 minutes 05 seconds East 137.88 feet;
- (6) North 61 degrees 19 minutes 40 seconds East 30.78 feet;
- (7) North 61 degrees 23 minutes 20 seconds East 38.07 feet;
- (8) North 62 degrees 13 minutes 50 seconds East 20.84 feet;
- (9) North 62 degrees 06 minutes 50 seconds East 90.37 feet;
- (10) North 62 degrees 05 minutes 45 seconds East 97.99 feet;
- (11) North 61 degrees 06 minutes 20 seconds East 119.52 feet; and
- (12) North 59 degrees 19 minutes 50 seconds East 101.38 feet to the westerly line of land now or formerly of Heinz;

THENCE along said last mentioned land, South 18 degrees 39 minutes 30 seconds East 571.16 feet to a corner;

THENCE continuing along said last mentioned land, North 77 degrees 21 minutes 20 seconds East 11.51 feet to a monument;

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE continuing along said last mentioned land and partially along a stone wall, the following 9 courses and distances:

- (1) North 77 degrees 21 minutes 20 seconds East 67.72 feet;
- (2) North 78 degrees 48 minutes 30 seconds East 114.31 feet;
- (3) North 77 degrees 52 minutes 30 seconds East 303.46 feet;
- (4) North 78 degrees 37 minutes 30 seconds East 78.59 feet;
- (5) North 76 degrees 48 minutes 50 seconds East 97.84 feet;
- (6) North 79 degrees 12 minutes 50 seconds East 121.08 feet;
- (7) North 80 degrees 35 minutes 50 seconds East 114.21 feet;
- (8) North 83 degrees 52 minutes 40 seconds East 28.40 feet; and
- (9) North 77 degrees 50 minutes 00 seconds East 382.30 feet to the westerly boundary of the Village of Mount Kisco;

THENCE along the westerly boundary of the Village of Mount Kisco, the following 14 courses and distances:

- (1) South 08 degrees 53 minutes 40 seconds East 693.23 feet;
- (2) South 79 degrees 12 minutes 20 seconds West 227.80 feet;
- (3) South 17 degrees 32 minutes 40 seconds East 147.00 feet;
- (4) South 05 degrees 58 minutes 40 seconds East 280.00 feet;
- (5) South 30 degrees 16 minutes 20 seconds West 242.00 feet;
- (6) South 10 degrees 52 minutes 40 seconds East 117.00 feet;
- (7) South 09 degrees 45 minutes 20 seconds West 105.00 feet;
- (8) South 35 degrees 20 minutes 40 seconds East 188.00 feet;
- (9) South 12 degrees 29 minutes 40 seconds East 227.00 feet;
- (10) South 11 degrees 44 minutes 20 seconds West 97.00 feet;
- (11) South 05 degrees 48 minutes 40 seconds East 108.00 feet;
- (12) South 21 degrees 16 minutes 20 seconds West 164.00 feet;
- (13) South 04 degrees 21 minutes 40 seconds East 180.00 feet; and

- SCHEDULE A (

DESCRIPTION - SCHEDULE A - CONTINUED

14: South 03 degrees 29 minutes 20 seconds West 131.00 feet to a point and other land owned by Eugene and Agnes E. Meyer Foundation;

THENCE along said last mentioned land, the following 12 courses and distances:

- (1) South 89 degrees 33 minutes 30 seconds West 418.17 feet;
- (2) North 84 degrees 02 minutes 25 seconds West 140.33 feet;
- (3) South 70 degrees 48 minutes 05 seconds West 77.82 feet;
- (4) South 57 degrees 03 minutes 20 seconds West 115.72 feet;
- (5) South 18 degrees 21 minutes 20 seconds West 835.19 feet;
- (6) South 82 degrees 27 minutes 20 seconds West 219.14 feet;
- (7) South 57 degrees 47 minutes 30 seconds West 196.34 feet;
- (8) North 84 degrees 08 minutes 25 seconds West 319.91 feet;
- (9) North 81 degrees 37 minutes 15 seconds West 22.17 feet;
- (10) North 83 degrees 39 minutes 35 seconds West 66.92 feet;
- (11) North 86 degrees 37 minutes 10 seconds West 28.66 feet; and
- (12) North 84 degrees 18 minutes 40 seconds West 243.31 feet to the easterly side of Oregon Road in the Town of North Castle;

THENCE northerly and westerly along the easterly and northerly sides of Oregon Road, the following 86 courses and distances:

- (1) North 20 degrees 28 minutes 30 seconds East 9.06 feet;
- (2) North 25 degrees 43 minutes 10 seconds East 18.20 feet;
- (3) North 17 degrees 31 minutes 00 seconds East 37.48 feet;
- (4) North 12 degrees 12 minutes 20 seconds East 41.44 feet;
- (5) North 12 degrees 03 minutes 20 seconds East 49.07 feet;
- (6) North 08 degrees 54 minutes 10 seconds East 24.23 feet;
- (7) North 00 degrees 45 minutes 25 seconds East 53.73 feet;
- (8) North 00 degrees 00 minutes 50 seconds East 37.94 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (9) North 74 degrees 59 minutes 50 seconds East 2.59 feet;
- (10) North 13 degrees 48 minutes 10 seconds West 24.94 feet;
- (11) North 13 degrees 26 minutes 25 seconds West 29.77 feet;
- (12) North 08 degrees 09 minutes 10 seconds West 38.85 feet;
- (13) North 01 degrees 13 minutes 00 seconds West 16.00 feet;
- (14) North 10 degrees 54 minutes 50 seconds East 128.81 feet;
- (15) North 03 degrees 01 minutes 20 seconds West 12.90 feet;
- (16) North 02 degrees 45 minutes 50 seconds East 102.66 feet;
- (17) North 01 degrees 03 minutes 20 seconds East 72.67 feet;
- (18) North 04 degrees 23 minutes 00 seconds East 50.25 feet;
- (19) North 03 degrees 02 minutes 40 seconds East 39.72 feet;
- (20) North 07 degrees 53 minutes 55 seconds West 9.10 feet;
- (21) North 07 degrees 55 minutes 30 seconds East 13.49 feet;
- (22) North 61 degrees 13 minutes 00 seconds West 36.64 feet;
- (23) North 61 degrees 08 minutes 50 seconds West 80.86 feet;
- (24) North 62 degrees 53 minutes 20 seconds West 41.74 feet;
- (25) North 61 degrees 23 minutes 20 seconds West 54.34 feet;
- (26) North 51 degrees 42 minutes 35 seconds West 4.12 feet;
- (27) North 64 degrees 58 minutes 50 seconds West 47.10 feet;
- (28) North 80 degrees 35 minutes 00 seconds West 34.72 feet;
- (29) North 86 degrees 09 minutes 30 seconds West 54.62 feet;
- (30) North 56 degrees 30 minutes 10 seconds West 3.30 feet;
- (31) South 66 degrees 58 minutes 10 seconds West 5.80 feet;
- (32) South 87 degrees 15 minutes 10 seconds West 23.16 feet;
- (33) North 17 degrees 51 minutes 00 seconds West 22.64 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (34) North 04 degrees 06 minutes 10 seconds West 15.10 feet;
- (35) North 22 degrees 26 minutes 50 seconds West 30.77 feet;
- (36) North 38 degrees 41 minutes 00 seconds West 7.90 feet;
- (37) North 25 degrees 28 minutes 50 seconds West 13.95 feet;
- (38) North 32 degrees 45 minutes 30 seconds West 38.35 feet;
- (39) North 47 degrees 05 minutes 20 seconds West 21.53 feet;
- (40) North 26 degrees 02 minutes 40 seconds West 39.47 feet;
- (41) North 56 degrees 15 minutes 20 seconds West 11.92 feet;
- (42) North 32 degrees 26 minutes 20 seconds West 23.73 feet;
- (43) North 27 degrees 25 minutes 50 seconds West 57.96 feet;
- (44) North 36 degrees 18 minutes 25 seconds West 114.20 feet;
- (45) North 27 degrees 43 minutes 30 seconds West 45.93 feet;
- (46) North 18 degrees 11 minutes 00 seconds West 74.61 feet;
- (47) North 37 degrees 26 minutes 10 seconds West 12.57 feet;
- (48) North 19 degrees 59 minutes 45 seconds West 22.87 feet;
- (49) North 12 degrees 18 minutes 50 seconds West 14.11 feet;
- (50) North 24 degrees 11 minutes 40 seconds West 20.33 feet;
- (51) North 16 degrees 06 minutes 45 seconds West 16.47 feet;
- (52) North 00 degrees 22 minutes 45 seconds East 18.12 feet;
- (53) North 13 degrees 02 minutes 40 seconds West 27.78 feet;
- (54) North 07 degrees 25 minutes 45 seconds West 45.32 feet;
- (55) North 12 degrees 51 minutes 50 seconds West 24.30 feet;
- (56) North 00 degrees 07 minutes 00 seconds West 14.83 feet;
- (57) North 15 degrees 09 minutes 40 seconds West 49.17 feet;
- (58) North 32 degrees 13 minutes 50 seconds West 39.54 feet;

DESCRIPTION - SCHEDULE A - CONTINUED

- (59) North 30 degrees 20 minutes 40 seconds West 43.29 feet;
- (60) North 20 degrees 51 minutes 55 seconds West 25.58 feet;
- (61) North 02 degrees 49 minutes 30 seconds West 15.83 feet;
- (62) North 29 degrees 38 minutes 50 seconds West 15.46 feet;
- (63) North 08 degrees 12 minutes 35 seconds West 12.18 feet;
- (64) North 29 degrees 28 minutes 20 seconds West 17.01 feet;
- (65) North 16 degrees 45 minutes 00 seconds West 17.31 feet;
- (66) North 09 degrees 34 minutes 20 seconds West 28.32 feet;
- (67) North 13 degrees 48 minutes 20 seconds West 36.16 feet;
- (68) North 03 degrees 45 minutes 40 seconds East 12.35 feet;
- (69) North 15 degrees 01 minutes 55 seconds West 46.88 feet;
- (70) North 29 degrees 21 minutes 00 seconds West 53.50 feet;
- (71) North 23 degrees 46 minutes 40 seconds West 17.29 feet;
- (72) North 37 degrees 32 minutes 30 seconds West 14.49 feet;
- (73) North 49 degrees 15 minutes 20 seconds West 44.49 feet;
- (74) North 71 degrees 28 minutes 20 seconds West 11.64 feet;
- (75) North 57 degrees 26 minutes 30 seconds West 10.54 feet;
- (76) North 73 degrees 01 minutes 15 seconds West 37.09 feet;
- (77) North 82 degrees 18 minutes 20 seconds West 47.87 feet;
- (78) North 84 degrees 10 minutes 30 seconds West 22.47 feet;
- (79) South 83 degrees 01 minutes 40 seconds West 22.16 feet;
- (80) North 84 degrees 54 minutes 00 seconds West 17.10 feet;
- (81) South 86 degrees 06 minutes 00 seconds West 27.49 feet;
- (82) North 81 degrees 44 minutes 10 seconds West 153.53 feet;
- (83) North 79 degrees 42 minutes 00 seconds West 134.00 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (84) North 84 degrees 39 minutes 00 seconds West 43.00 feet;
- (85) North 89 degrees 32 minutes 00 seconds West 114.00 feet; and
- (86) North 71 degrees 22 minutes 00 seconds West 85.00 feet to a point of curve;

THENCE northeasterly on a curve to the right having a radius of 50.00 feet connecting the northeasterly side of Oregon Road and the southeasterly side of Lower Byram Lake Road, a distance of 68.56 feet to a point on the southeasterly side of Lower Byram Lake Road;

THENCE northerly, northeasterly, southeasterly and northeasterly along the easterly and southerly sides of Lower Byram Lake Road in the Town of New Castle and continuing along Oregon Road in the Town of Bedford, the following 20 courses and distances:

- (1) North 07 degrees 12 minutes 00 seconds East 134.10 feet;
- (2) North 67 degrees 36 minutes 00 seconds East 171.94 feet;
- (3) North 58 degrees 22 minutes 00 seconds East 68.77 feet;
- (4) North 54 degrees 24 minutes 00 seconds East 61.60 feet;
- (5) South 45 degrees 22 minutes 00 seconds East 61.00 feet;
- (6) South 23 degrees 02 minutes 00 seconds East 19.13 feet to a point of curve;
- (7) Northeasterly on a curve to the left having a radius of 85.00 feet, a distance of 185.47 feet;
- (8) North 31 degrees 57 minutes 00 seconds East 46.34 feet to a point of curve;
- (9) Easterly on a curve to the right having a radius of 60.00 feet, a distance of 36.37 feet;
- (10) North 66 degrees 41 minutes 00 seconds East 138.42 feet to a point of curve;
- (11) Northerly on a curve to the left having a radius of 215.00 feet, a distance of 170.59 feet;
- (12) North 68 degrees 46 minutes 40 seconds West 10.74 feet;
- (13) North 29 degrees 31 minutes 00 seconds East 13.38 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (14) North 25 degrees 41 minutes 40 seconds East 43.31 feet;
- (15) North 19 degrees 05 minutes 15 seconds East 15.26 feet;
- (16) North 16 degrees 07 minutes 45 seconds East 224.55 feet;
- (17) North 18 degrees 19 minutes 50 seconds East 34.60 feet;
- (18) North 26 degrees 10 minutes 25 seconds East 63.52 feet;
- (19) North 22 degrees 47 minutes 50 seconds East 65.76 feet; and
- (20) North 31 degrees 15 minutes 05 seconds East 23.92 feet to the northwesterly corner of the aforesaid land now or formerly of Davis;

THENCE along said last mentioned land, the following 25 courses and distances:

- (1) South 34 degrees 56 minutes 00 seconds East 192.00 feet;
- (2) South 31 degrees 33 minutes 00 seconds East 59.52 feet;
- (3) South 08 degrees 31 minutes 00 seconds East 171.26 feet;
- (4) South 01 degrees 09 minutes 00 seconds East 135.20 feet;
- (5) South 05 degrees 33 minutes 00 seconds West 40.46 feet;
- (6) South 11 degrees 52 minutes 00 seconds West 49.65 feet;
- (7) South 07 degrees 24 minutes 00 seconds West 19.14 feet;
- (8) South 13 degrees 08 minutes 29 seconds West 88.58 feet;
- (9) South 66 degrees 36 minutes 00 seconds East 26.85 feet;
- (10) South 71 degrees 10 minutes 00 seconds East 14.57 feet;
- (11) South 56 degrees 16 minutes 00 seconds East 27.84 feet;
- (12) South 24 degrees 05 minutes 00 seconds East 6.77 feet;
- (13) South 49 degrees 43 minutes 00 seconds East 6.55 feet;
- (14) South 71 degrees 15 minutes 00 seconds East 25.54 feet;
- (15) North 89 degrees 31 minutes 00 seconds East 25.62 feet;

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

- (16) North 28 degrees 36 minutes 00 seconds East 70.39 feet;
- (17) North 69 degrees 20 minutes 00 seconds East 89.16 feet;
- (18) North 76 degrees 50 minutes 00 seconds East 59.96 feet;
- (19) North 86 degrees 51 minutes 00 seconds East 16.51 feet;
- (20) North 81 degrees 27 minutes 00 seconds East 42.48 feet;
- (21) North 78 degrees 13 minutes 52 seconds East 121.74 feet;
- (22) North 10 degrees 45 minutes 22 seconds West 242.59 feet;
- (23) North 14 degrees 47 minutes 20 seconds West 42.12 feet;
- (24) North 10 degrees 37 minutes 41 seconds West 179.17 feet; and
- (25) North 12 degrees 08 minutes 58 seconds West 474.81 feet to the southerly side of Oregon Road in the Town of Bedford, the point or place of BEGINNING.

- SCHEDULE A

DESCRIPTION - SCHEDULE A - CONTINUED

EXCEPTING THEREOUT AND THEREFROM the following premises, described as "Parcel I" in Deed made by Seven Springs Farm Center, Inc. to John S. Mazella and E. Patricia Mazella, his wife, dated February 6, 1976, recorded February 9, 1976 in Liber 7312 cp 521:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the point on the southerly side of Oregon Road where the same is intersected by the boundary line between the Town of New Castle and the Town of Bedford;

THENCE RUNNING along said southerly side of Oregon Road,

North 25 degrees 45 minutes 50 seconds East 54.47 feet; and

North 34 degrees 13 minutes 05 seconds East 23.92 feet to land now or formerly of Mazella;

THENCE TURNING AND RUNNING along said land, the following 8 courses and distances:

- (1) South 31 degrees 58 minutes 00 seconds East 192.00 feet;
- (2) South 28 degrees 35 minutes 00 seconds East 59.52 feet;
- (3) South 05 degrees 33 minutes 00 seconds East 171.26 feet;
- (4) South 01 degrees 49 minutes 00 seconds West 135.20 feet;
- (5) South 08 degrees 31 minutes 00 seconds West 40.46 feet;
- (6) South 14 degrees 50 minutes 00 seconds West 49.65 feet;
- (7) South 10 degrees 22 minutes 00 seconds West 19.14 feet; and
- (8) South 16 degrees 06 minutes 29 seconds West 88.58 feet to a point;

THENCE TURNING AND RUNNING North 63 degrees 38 minutes 00 seconds West 21.52 feet to a point in the boundary line between the Town of New Castle and the Town of Bedford; and

THENCE TURNING AND RUNNING along said boundary line, North 10 degrees 08 minutes 51 seconds West 644.36 feet to the point and place of BEGINNING.

DESCRIPTION - SCHEDULE A - CONTINUED

PARCEL 3

All that certain plot, piece or parcel of land, situate, lying and being in the Town of Bedford, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Road where the same is intersected by the southerly line of lands conveyed by H.J. Heinz II to Elizabeth Graham Weymouth by deed dated August 21, 1972, recorded August 29, 1972 in Liber 7077 cp 348:

RUNNING THENCE along said lands now or formerly of Elizabeth Graham Weymouth, the following 12 courses and distances:

- (1) South 71 degrees 40 minutes 20 seconds East 173.64 feet to a point of curve;
- (2) In a southerly direction on a curve to the right with a radius of 250 feet, a distance of 304.81 feet to a point of tangency;
- (3) South 01 degrees 48 minutes 50 seconds East 53.82 feet;
- (4) South 03 degrees 08 minutes 20 seconds West 97.52 feet;
- (5) South 04 degrees 25 minutes 30 seconds West 73.76 feet;
- (6) South 08 degrees 12 minutes 20 seconds West 77.16 feet to a point of curve;
- (7) In a southwesterly direction on a curve to the right with a radius of 300 feet, a distance of 196.17 feet to a point of tangency;
- (8) South 44 degrees 54 minutes 25 seconds West 64.15 feet;
- (9) South 38 degrees 19 minutes 40 seconds West 34.41 feet to a point of curve;
- (10) In a southwesterly direction on a curve to the left with a radius of 130 feet, a distance of 64.42 feet;
- (11) South 73 degrees 24 minutes 59 seconds East 493.65 feet; and
- (12) North 77 degrees 41 minutes 50 seconds East 675.31 feet to lands now or formerly of the City of New York;

THENCE along the same, South 09 degrees 07 minutes 30 seconds East 251.91 feet to lands now or formerly of Eugene Meyer, Jr.;

DESCRIPTION - SCHEDULE A - CONTINUED

THENCE along said lands now or formerly of Eugene Meyer, Jr., the following 10 courses and distances:

- (1) South 77 degrees 41 minutes 50 seconds West 382.30 feet;
- (2) South 83 degrees 44 minutes 30 seconds West 28.40 feet;
- (3) South 80 degrees 27 minutes 40 seconds West 114.21 feet;
- (4) South 79 degrees 04 minutes 40 seconds West 121.08 feet;
- (5) South 76 degrees 40 minutes 40 seconds West 97.84 feet;
- (6) South 78 degrees 29 minutes 20 seconds West 78.59 feet;
- (7) South 77 degrees 44 minutes 20 seconds West 303.46 feet;
- (8) South 78 degrees 40 minutes 20 seconds West 114.31 feet;
- (9) South 77 degrees 13 minutes 10 seconds West 79.23 feet; and
- (10) North 18 degrees 47 minutes 40 seconds West 616.16 feet to the easterly side of Oregon Road;

THENCE along the easterly side of Oregon Road, part of the way along a stone wall, the following 8 courses and distances:

- (1) North 16 degrees 31 minutes 40 seconds East 53.53 feet;
- (2) North 11 degrees 48 minutes 20 seconds East 173.64 feet;
- (3) North 13 degrees 18 minutes 20 seconds East 101.89 feet;
- (4) North 14 degrees 03 minutes 00 seconds East 31.05 feet;
- (5) North 11 degrees 48 minutes 30 seconds East 101.20 feet;
- (6) North 12 degrees 06 minutes 30 seconds East 184.69 feet;
- (7) North 11 degrees 33 minutes 40 seconds East 115.58 feet; and
- (8) North 10 degrees 46 minutes 50 seconds East 78.07 feet to the point and place of BEGINNING.

DESCRIPTION - SCHEDULE A

Said land being the same land previously conveyed by the following deeds:

Deed from Seven Springs Center, Inc. to The Rockefeller University dated April 12, 1984 and recorded May 24, 1984 at Liber 7923 Page 639.

Deed from The Eugene & Agnes E. Meyer Foundation to The Rockefeller University dated March 30, 1993 and recorded May 21, 1993 at Liber 10583 Page 47.

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LIBER 7127 PAGE 719

07415

TAX STAMPS ATTACHED \$ MAY 30 1973

THIS INDENTURE, made the 25th day of *May* nineteen hundred and seventy-three, between EUGENE AND AGNES E. MEYER FOUNDATION, a New York corporation having an office at 1730 Rhode Island Avenue, N.W., Washington, D.C. 20036 (the party of the first part) and THE NATURE CONSERVANCY, a District of Columbia corporation having an office at 1800 North Kent Street, Arlington, Virginia (the party of the second part).

WITNESSETH, that the party of the first part, for no consideration and as a gift, does hereby grant and release unto the party of the second part, the successors and assigns of the party of the second part forever.

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being partially in the Towns of New Castle and North Castle, County of Westchester and State of New York, as more particularly described in Schedule A annexed to and made a part of this deed.

SCHEDULE A

PARCEL I

BEGINNING at the corner formed by the intersection of the easterly side of Woodside Road and the southerly side of Oregon Road;

Running thence northeasterly from said point of beginning along the southerly side of Oregon Road and the northerly face of a stone wall the following courses and distances:

North 76° 46' 20"	East 29.59 feet
South 85° 25' 45"	East 78.18 feet
North 82° 40' 20"	East 115.25 feet
South 30° 45' 30"	East 2.39 feet
North 77° 01' 35"	East 62.09 feet
South 52° 03' 00"	East 16.02 feet
South 68° 09' 00"	East 42.10 feet
South 73° 21' 50"	East 18.93 feet
North 72° 37' 05"	East 24.44 feet
North 67° 13' 40"	East 28.60 feet
North 87° 33' 45"	East 12.93 feet
North 62° 00' 40"	East 38.53 feet

To the corner formed by the intersection of the southerly side of Oregon Road and the southern termination point of lower Byram Lake Road thence still along the southerly side of Oregon Road and the north face of a stone wall the following courses and distances:

South 65° 20' 50"	East 32.84 feet
South 60° 41' 50"	East 38.11 feet
South 62° 19' 50"	East 23.43 feet
South 83° 16' 00"	East 22.17 feet
South 66° 52' 20"	East 26.55 feet
South 72° 21' 15"	East 17.91 feet
North 88° 00' 30"	East 25.33 feet
North 89° 40' 00"	East 84.16 feet
North 89° 52' 10"	East 22.06 feet
South 85° 29' 00"	East 22.98 feet
South 79° 52' 25"	East 30.66 feet
South 80° 47' 50"	East 68.91 feet
South 84° 11' 30"	East 40.02 feet
South 84° 28' 45"	East 36.69 feet
South 64° 59' 15"	East 7.76 feet
South 88° 12' 35"	East 28.80 feet
South 87° 03' 30"	East 39.55 feet
South 87° 06' 25"	East 34.08 feet
South 80° 15' 55"	East 23.18 feet
South 72° 42' 40"	East 31.93 feet
South 53° 55' 40"	East 21.42 feet
South 47° 56' 35"	East 31.95 feet
South 36° 16' 35"	East 16.22 feet
South 24° 12' 20"	East 29.76 feet
South 17° 00' 00"	East 39.16 feet

South 12° 43' 10" East 19.85 feet
 South 0° 14' 55" West 11.53 feet
 South 11° 55' 55" East 29.07 feet
 South 27° 18' 15" East 6.93 feet
 South 9° 18' 25" East 15.21 feet
 South 17° 51' 10" East 21.17 feet
 South 12° 48' 40" East 17.81 feet
 South 20° 24' 45" East 26.58 feet
 South 29° 40' 10" East 30.97 feet
 South 21° 54' 30" East 20.88 feet
 South 25° 05' 25" East 43.11 feet
 South 14° 58' 45" East 70.41 feet
 South 17° 48' 00" East 2.00 feet
 South 10° 04' 00" East 28.20 feet
 South 8° 17' 05" East 47.19 feet
 South 14° 55' 55" East 40.48 feet
 South 19° 51' 10" East 27.47 feet
 South 18° 25' 40" East 47.23 feet
 South 16° 53' 35" East 32.80 feet
 South 30° 02' 40" East 26.52 feet
 South 41° 48' 50" East 25.32 feet
 South 8° 09' 05" East 3.74 feet
 South 45° 15' 40" East 29.42 feet
 South 37° 01' 00" East 45.93 feet
 South 34° 46' 00" East 32.76 feet
 South 29° 56' 05" East 33.41 feet
 South 28° 36' 50" East 101.82 feet
 South 31° 46' 35" East 54.80 feet
 South 26° 40' 40" East 67.86 feet
 South 7° 58' 05" East 37.95 feet
 South 0° 33' 35" East 14.34 feet

Thence along the southerly side of Oregon Road the following course and distance:

South 87° 11' 15" East 201.31 feet

Thence along the southeasterly side of Oregon Road and the northerly face of a stone wall the following courses and distances:

South 66° 00' 10" East 49.72 feet
 South 58° 53' 40" East 28.30 feet

Thence along the southeasterly side of Oregon Road the following courses and distances:

South 60° 30' 20" East 52.69 feet
 South 37° 59' 00" East 42.38 feet
 South 3° 05' 30" West 240.00 feet
 South 86° 54' 30" East 18.36 feet

Thence along the westerly side of Oregon Road and the easterly face of a stone wall the following courses and distances:

South 5° 32' 05" West 59.11 feet
 South 4° 08' 50" West 59.33 feet
 South 65° 05' 55" West 11.71 feet
 South 40° 14' 10" West 7.83 feet
 South 3° 38' 00" West 25.40 feet
 South 24° 41' 40" East 9.45 feet
 South 51° 57' 35" East 11.55 feet
 South 5° 00' 45" West 43.15 feet
 South 2° 13' 10" West 96.30 feet
 South 4° 46' 40" West 75.28 feet
 South 9° 17' 35" West 71.40 feet
 South 15° 06' 20" West 55.49 feet
 South 26° 07' 30" West 36.63 feet
 South 22° 32' 45" West 31.71 feet
 South 24° 34' 40" West 44.77 feet
 South 26° 50' 00" West 16.26 feet
 South 18° 55' 55" West 28.45 feet
 South 8° 02' 45" West 69.07 feet
 South 16° 19' 30" West 46.46 feet
 South 7° 20' 35" East 9.78 feet
 South 12° 46' 05" West 45.47 feet
 South 24° 51' 10" West 36.38 feet
 South 16° 21' 10" West 35.16 feet
 South 9° 49' 16" West 21.34 feet
 South 20° 05' 40" West 105.77 feet
 South 11° 35' 05" West 30.23 feet
 South 3° 16' 15" East 27.16 feet
 South 6° 24' 35" West 35.74 feet

To a point and thence

South 89° 34' 30" West 611.44 feet

To the northeast corner of land now or formerly of the Estate of Jennie A. Peters and continuing along the northerly side of said last mentioned land:

South 63° 54' 00" West 198.08 feet

To a point on the easterly side of a brook and thence crossing said brook in a northwesterly direction along the northerly side of land now or formerly of Vincent Castellucci, the following courses and distances:

North 38° 46' 00" West 165.53 feet
 North 78° 15' 10" West 633.36 feet

Thence continuing along the northerly line of said last mentioned land and the southerly face of a stone wall the following courses and distances:

North 81° 59' 40" West 43.01 feet
 North 79° 47' 40" West 121.22 feet
 South 83° 38' 35" West 141.22 feet
 South 88° 58' 50" West 41.80 feet
 North 81° 50' 50" West 87.78 feet

Thence along the northerly side of said last mentioned land the following course and distance:

North 5° 13' 20" West 63.96 feet

Thence continuing along the northerly side of said last mentioned land and the southerly face of a stone wall the following courses and distances:

North 76° 38' 50" West 145.22 feet
 South 83° 26' 10" West 68.95 feet
 North 56° 59' 35" West 55.86 feet
 North 51° 39' 40" West 47.15 feet
 North 44° 08' 05" West 36.21 feet

To a point on the easterly side of Woodside Road and the westerly face of a stone wall and continuing in a northerly direction along the easterly side of Woodside Road and the westerly face of a stone wall the following courses and distances:

North 54° 54' 30" East 13.60 feet
 North 33° 51' 35" East 4.68 feet
 North 50° 36' 45" East 28.78 feet
 North 71° 20' 55" East 5.85 feet
 North 53° 09' 40" East 21.62 feet
 North 47° 41' 05" East 38.50 feet
 North 48° 21' 10" East 50.05 feet
 North 44° 58' 30" East 48.12 feet
 North 48° 09' 50" East 46.63 feet
 North 45° 13' 40" East 23.12 feet
 North 30° 22' 05" East 22.79 feet
 North 29° 17' 55" East 35.54 feet
 North 23° 31' 55" East 50.32 feet
 North 18° 05' 15" East 8.86 feet
 North 30° 36' 05" East 16.52 feet
 North 15° 29' 55" East 10.74 feet
 North 26° 58' 00" East 50.39 feet
 North 22° 08' 40" East 107.58 feet
 North 23° 34' 05" East 90.84 feet
 North 20° 30' 05" East 38.86 feet
 North 23° 14' 25" East 54.82 feet
 North 13° 04' 25" East 54.73 feet

North	8°	56'	40"	East	39.24	feet
North	9°	13'	55"	West	25.80	feet
North	9°	05'	00"	West	56.57	feet
North	11°	37'	45"	West	39.09	feet
North	8°	27'	00"	West	44.82	feet
North	6°	26'	00"	West	39.27	feet
North	11°	25'	00"	West	16.77	feet
North	13°	07'	25"	West	23.61	feet
North	12°	42'	40"	West	36.59	feet
North	8°	18'	25"	West	31.49	feet
North	6°	47'	55"	West	72.22	feet
North	14°	45'	15"	West	20.69	feet
North	6°	33'	10"	West	45.39	feet
North	5°	33'	30"	West	63.18	feet
North	1°	19'	10"	East	76.87	feet
North	9°	46'	10"	East	61.64	feet
North	6°	59'	30"	East	39.59	feet
North	11°	51'	20"	East	56.80	feet
North	13°	50'	25"	East	86.22	feet
North	18°	21'	35"	East	65.40	feet
North	17°	29'	50"	East	77.69	feet
North	5°	47'	45"	East	10.10	feet
North	14°	23'	55"	East	72.95	feet
North	22°	41'	55"	East	12.93	feet
North	13°	41'	20"	East	43.99	feet
North	23°	31'	35"	East	14.68	feet
North	26°	14'	50"	West	6.44	feet
North	14°	46'	30"	East	22.39	feet
North	36°	14'	20"	East	14.72	feet

To the corner formed by the intersection of the easterly side of Woodside Road and the southerly side of Oregon Road THE POINT OR PLACE OF BEGINNING.

Also designated as Map No. 14 190 on file in the Westchester County Clerk's Office (and as shown on the survey by ~~Heath's~~ dated April 0, 1993 which survey is approved ~~here as Exhibit A.~~)

George Landon 5/30/73

PARCEL II

BEGINNING at a point on the northerly side of Oregon Road where the same is intersected by the south easterly corner of land now or formerly of Jay E. Healey;

Running thence from said point of beginning / along said last mentioned land in a northerly direction the following courses and distances:

North 15° 04' 50" East 588.01 feet
 North 8° 46' 20" East 79.03 feet
 South 77° 10' 10" East 62.14 feet
 North 5° 58' 50" East 674.68 feet
 North 57° 15' 10" West 1020.90 feet

To a point on the Easterly side of Oregon Road; thence in a northerly direction the following course and distance:

North 13° 04' 45" East 179.56 feet.

Thence along the west face of a stone wall continuing in a northerly direction, the following courses and distances:

North 19° 20' 25" East 178.19 feet
 North 5° 48' 15" East 84.05 feet
 North 4° 49' 20" East 86.10 feet
 North 2° 28' 30" East 47.09 feet
 North 45° 35" East 97.87 feet
 North 1° 37' 40" East 86.25 feet
 North 4° 29' 30" East 85.41 feet
 North 7° 49' 15" East 68.35 feet
 North 12° 24' 35" East 77.94 feet
 North 1° 54' 10" East 32.83 feet
 North 24° 50' 50" West 18.49 feet
 North 12° 13' 35" West 28.71 feet
 North 15° 36' 45" West 25.04 feet
 North 32° 01' 15" East 56.92 feet
 North 54° 40' 35" West 9.93 feet
 North 70° 14' 05" West 19.75 feet
 North 16° 02' 05" East 128.16 feet
 North 10° 32' 00" East 28.34 feet
 North 14° 15' 55" East 14.57 feet
 North 6° 42' 05" East 19.62 feet
 North 11° 15' 40" East 16.18 feet
 North 7° 26' 55" East 12.73 feet
 North 11° 58' 35" East 25.64 feet
 North 14° 58' 50" East 38.42 feet
 North 14° 24' 15" East 41.21 feet
 North 21° 30' 40" East 75.60 feet
 North 36° 17' 45" East 6.59 feet

To the southwest corner of land now or formerly of Yale University;

Thence along the said last mentioned land in an easterly direction the following courses and distances:

South 84° 18' 40" East 243.31 feet
 South 86° 37' 10" East 28.66 feet
 South 83° 39' 35" East 66.92 feet
 South 81° 37' 15" East 22.17 feet
 South 84° 08' 25" East 319.91 feet
 North 57° 47' 30" East 196.34 feet
 North 82° 27' 20" East 219.14 feet
 North 18° 21' 20" East 835.19 feet
 North 57° 03' 20" East 115.72 feet
 North 70° 48' 05" East 77.82 feet
 South 84° 02' 25" East 140.33 feet
 North 89° 33' 30" East 418.17 feet

To a point on lands now or formerly owned by the Village of Mount Kisco;

Thence along said last mentioned land the following courses and distances:

South 5° 51' 20" West 223.00 feet
 South 28° 12' 20" West 254.00 feet
 South 1° 25' 40" East 262.00 feet
 South 15° 08' 20" West 200.00 feet
 South 3° 22' 20" West 224.00 feet
 South 6° 29' 40" East 160.00 feet
 South 7° 55' 35" East 238.53 feet
 South 3° 25' 40" East 154.00 feet
 South 23° 07' 20" West 361.00 feet
 South 5° 50' 20" West 92.60 feet
 South 15° 28' 20" West 150.47 feet
 South 15° 09' 50" West 184.00 feet
 South 20° 35' 20" West 207.50 feet
 South 1° 57' 50" West 229.00 feet
 South 26° 26' 50" West 64.50 feet
 South 11° 48' 50" West 110.60 feet
 South 41° 03' 20" West 714.00 feet
 South 28° 18' 20" West 435.00 feet

Thence continuing along the last mentioned land and along the easterly face of a stone wall the following courses and distances:

South 14° 59' 40" East 138.00 feet
 South 9° 56' 20" West 44.00 feet
 South 20° 41' 20" West 90.00 feet
 South 29° 34' 20" West 63.00 feet
 South 37° 32' 20" West 219.00 feet
 South 23° 41' 20" West 59.00 feet
 North 86° 19' 40" West 245.00 feet
 South 17° 51' 40" East 107.60 feet

To a point on the northerly side of Oregon Road and running thence along the northerly side of Oregon Road the following courses and distances:

North 67° 16' 25" West	68.26 feet
North 69° 24' 20" West	8.64 feet
North 67° 33' 40" West	19.89 feet
North 56° 15' 05" West	91.30 feet
North 16° 00' 50" East	51.51 feet

To the corner formed by the intersection of the northerly side of Oregon Road and the southeast corner of land now or formerly of Jay E. Healey THE POINT OR PLACE OF BEGINNING.

Also designated as Map No. 14122 on file in the Westchester County Clerk's Office ~~and as shown on the survey by Huntley dated April 12, 1923, which survey is attached hereto as Exhibit B.~~

George Leachman
5/30/73

LIBER 7127 PAGE 728

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the successors and assigns of the party of the second part forever.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration

as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

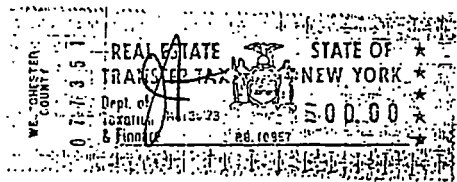
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.



EUGENE AND AGNES E. MEYER FOUNDATION,

by Sandra Lawrence

Joseph L. Kennedy

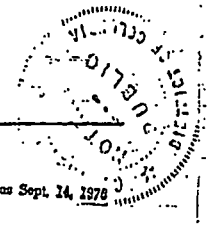


STATE OF)
) ss.:
COUNTY OF)

On the 25th day of May 1973, before me personally came *Davidson Semmers*, to me known, who, being by me duly sworn, did depose and say that he resides at *3900 Watson Pl., N.W., Washington, D.C.*; that he is the *Chairman* of the EUGENE AND AGNES E. MEYER FOUNDATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

C. J. Reynolds
Notary Public

My Commission Expires Sept. 14, 1978



Serial A 14509

DISTRICT OF COLUMBIA

To ALL WHOM THESE PRESENTS SHALL COME, GREETINGS

I CERTIFY THAT C. J. REYNOLDS whose name is subscribed to the accompanying instrument, was at the time of signing the same a Notary Public in and for the District of Columbia, and duly commissioned and authorized by the laws of said District of Columbia to take the acknowledgment and proof of deeds or conveyance of lands, tenements, or hereditaments, and other instruments in writing to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature and impression of seal thereon are genuine, after comparison with signature and impression of seal on file in this office.

In Witness Whereof, the Executive Secretary to Commissioner of the District of Columbia, has hereunto caused the Seal of the District of Columbia to be affixed at the City of Washington, D.C. this 29th day of MAY 1973

(D.C. SEAL)

F. M. Batchelder
Chief Notary Public Section
Notary Public Clerk

*Owned by Maurice Moore
1 Chr. Manhattan Plaza
New York 10005
New York, N. Y.*

EUGENE AND AGNES E. MEYER
FOUNDATION

-to-

THE NATURE CONSERVANCY

VLN
VLN

~~TOWNS~~
DEED

The Property affected by this instrument
is situate in the City of *New Castle*
Town of *North Castle*
in the County of Westchester, New York

Section 27
Block 2, Lot 49

21.00 B — CPa 00526 5-30-73

1973 MAY 30 PM 2:23

RECEIVED
WESTCHESTER COUNTY CLERK

WESTCHESTER COUNTY CLERK'S OFFICE	
DIVISION OF LAND RECORDS	
Stakey Date	1/5/73
Book & Page	1/21/73
Filing Date	1/21/73
Cross Ref No.	
Cur. Receipt	
Total	27
Town	North Castle
Block	2
Lot	49
No.	23676
Returned	

*Section 27
Block 2 - Parts - 4
Lots 1 & 3.
Block 6
Lots 3 & 4-5-6.
4 PARTS of Lots 1 & 2*

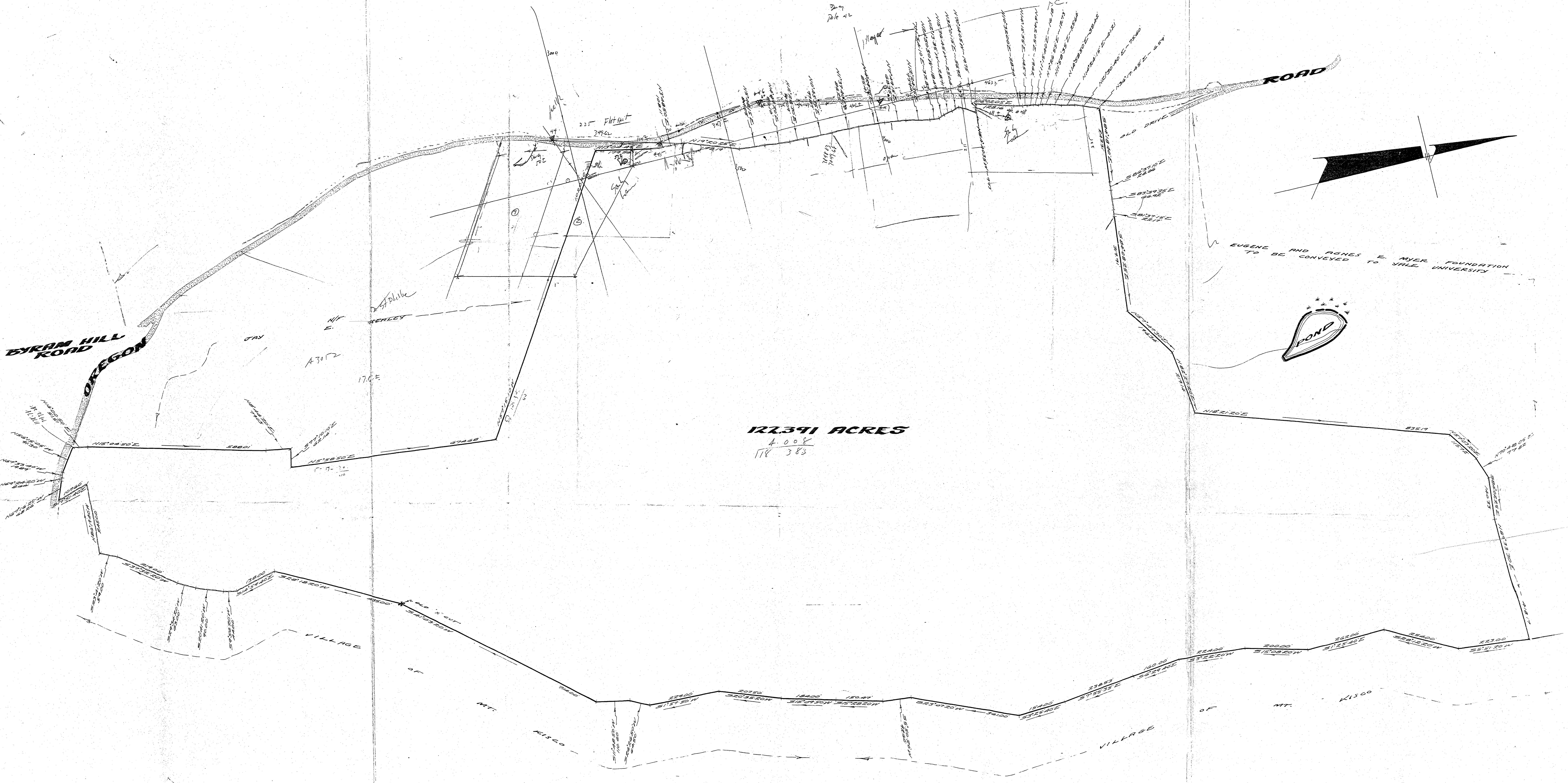
The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the TOWNS OF NEW CASTLE & NORTH CASTLE County of Westchester, N. Y. A true copy of the original DEED

recorded MAY 30, 1973 at 2:23 PM

EDWARD N. VETRANO, County Clerk.

Poor Quality

I



122.391 ACRES
 4.008
 178 383

SURVEY
 SHOWING LAND OWNED BY
EUGENE AND AGNES E. MEYER FOUNDATION
 TO BE CONVEYED TO
THE NATURE CONSERVANCY
 SITUATED IN THE TOWN OF NORTH CASTLE
 WESTCHESTER COUNTY NEW YORK
 BLOCK-9018 SHEET-153 SHEET-146

NOTE: REFERENCE IS HEREBY MADE TO A MAP PREPARED BY FRANK S. FULLER
 ENTITLED "CONVEYED PARCELS" DATED 1927, FILED IN THE OFFICE OF THE
 WESTCHESTER COUNTY CLERK, NEW YORK, APPROVED MAY 27, 1916 BY THE STATE
 THE COMMISSIONER.

NOTE: REFERENCE IS HEREBY MADE TO A MAP PREPARED BY G. HENRY CHRISTIE
 ENTITLED "LAND NOW OR FORMERLY OWNED BY THE STATE OF NEW YORK"
 TOWN OF NORTH CASTLE.

NOTE: PARCEL BOUNDARIES ARE SUBJECT TO ANY EASEMENTS THAT A TITLE SEARCH
 MAY DISCLOSE.

LEGEND
 STONE WALL
 NO PHYSICAL BOUNDS

SCALE 1"=100'



NEW YORK STATE
 DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF LAND USE AND PLANNING
 609 WEST COAST ST.
 ALBANY, N.Y. 12242

TNC-M-004

J

13

MEMORANDUM

TO: The File
FROM: Wayne G. Jackson *wgj*
SUBJECT: Meyer Property
DATE: January 15, 1973

I talked to Mr. Sommers, President of the Meyer Foundation, on 12 January about the changes which the New York lawyers for the Foundation had suggested for the letters which I had drafted to be sent by us to the Foundation relating to our future treatment of the property. I was unhappy with their proposal that we should state it as our intention that if at some future date TNC found it impractical to continue to manage the property, we would give it back to the Foundation or, if it were not in existence, to Yale. I explained that we were in the business of preserving land. If at some future date, we were no longer able to do this, we wanted the freedom to transfer it to someone who could preserve it. It is impossible to foresee the circumstances and we were quite willing to consult the Foundation and abide by their advice but an automatic informal reverter to the Foundation seemed too rigid. Also a transfer to Yale might well not result in the preservation of the natural character of the land. Sommers understood my concern. He said that Yale was worried that we could transfer it for public park uses. At any event, Sommers and I had a meeting of minds and he will talk to the New York lawyers. In the background is the fact that Mrs. Meyer had told Yale they could have the whole property and so Yale feels that it has some color of claim to be cut into any disposition which could affect their property.

The Foundation does not, at this time, propose to have a new appraisal of the property, but will use the 1970 appraisal used for the purposes of estate tax on Mrs. Meyer's estate. I pointed out that it will be very difficult to use that appraisal without help from the appraiser as it gives different values for different lots in the Meyer estate, which lots will not automatically be applicable to the proposed division of the property. All we wanted was to have our reporting to the IRS consistent with that of the Foundation.

TNC000303

MEMO - Meyer Property
January 15, 1973
Page 2

The survey of the property coming to TNC will probably not be completed before the middle of February, so our closing will be later than Yale's. We agreed (and Jack Lynn agreed with me) that the Yale closing announcement will not mention TNC by name.

There was some discussion of the exact boundaries of the property coming to TNC. The lines in question are in areas of the least interest to TNC, being largely open fields or third growth woods, nowhere near the ravine and old woods that particularly interest us. I told Sommers to draw the lines anywhere he wanted to.

WGJ/kj

TNC000304

k

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEEX: 620-976
TELETYPE: 710-581-0338
TELEX: 11-25547

EUROPEAN OFFICE
4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 285-81-17
TELEX: 20 530

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS

MAURICE T. MOORE
BRUCE BROMLEY
ROSWELL L. GILPATRICK
CARLYLE E. MAW
EDWARD S. PINNEY
THOMAS A. WALLERAN
ALBERT R. CONNELLY
L. R. BRESLIN, JR.
GEORGE B. TURNER
FRANK H. DETWEILER
GEORGE G. TYLER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
ALLEN H. HERRILL
HENRY W. DE KOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
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WILLIAM J. SCHRENK, JR.
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RICHARD S. SIMMONS
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JAMES H. DUFFY
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JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. NIEDEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK

February 21, 1973

Estate of Agnes E. Meyer

Dear Mr. Jackson:

Enclosed is a revised draft of your letter to Mr. Sommers in connection with the Meyer Sanctuary. The only change appears in the last portion of paragraph 3 on page 1.

The surveyor says that the survey will not be completed until the middle of March, and we will send it to you as soon as we have it.

Sincerely,



Christine Beshar

Wayne G. Jackson, Esq.,
The Nature Conservancy,
1800 North Kent Street - Suite 800,
Arlington, Virginia 22209.

Encl.

Copy to Davidson Sommers, Esq., Chairman,
Eugene and Agnes E. Meyer Foundation,
1730 Rhode Island Avenue, N. W.,
Washington, D. C. 20036.

Charles N. Schenck, III, Esq.,
Messrs. Wiggin & Dana,
205 Church Street,
New Haven, Connecticut 06508.

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TNC000296

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15

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 820-976

TELETYPE: 710-581-0338

TELEX: 11 25847

MAURICE T. MOORE
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ROSWELL L. GILPATRICK
CARLYLE S. MAW
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DAVID BOIES
DAVID G. BROWNWOOD
PAUL M. DODYK

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 285-81-17
TELEX: 29 530

GATEWAY HOUSE
1, WATLING STREET
LONDON, EC4P 4AU, ENGLAND
TELEPHONE: 01-248-0311
TELEX: 887925

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C.4

May 18, 1973

Dear Mr. Jackson:

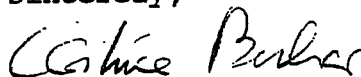
At long last we have not only the survey, but also the proposed deed; a copy is enclosed. As soon as the deed is signed, we shall have it recorded in Westchester County the then send it to you.

Enclosed is also a copy of an agreement which incorporates points 2 and 3 of the draft letter of 2/20/73, as revised by you on 2/26/73. While the Foundation is not planning to record it, the agreement should be in recordable form.

Enclosed finally is a draft of the letter from you to Dave Sommers. We have shortened the first point of the draft letter which is in part outdated, and deleted point 2 which is now covered by the agreement.

Would you please call me on the phone after you have had a chance to review the papers.

Sincerely,



Christine Beshar

Wayne G. Jackson, Esq.,
The Nature Conservancy,
1800 North Kent Street - Suite 800,
Arlington, Virginia 22209.

Encls.

8-A

TNC000292

M

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 620-976

TELETYPE: 710-581-0338

TELEX: 1-25547

4, PLACE DE LA CONCORDE
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CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK

May 22, 1973

Seven Springs Farm

Dear Mr. Jackson:

Enclosed is a copy of a memorandum dated January 22, 1973, and the attached schedule on which I have attempted to allocate the total value of Seven Springs Farm, as shown in Mrs. Meyer's Federal and New York estate tax returns (\$2,200,000 for the land and \$400,000 for the buildings) among the various lots in North Castle, New Castle and Bedford which were distributed to Yale, will be distributed to The Nature Conservancy and will be retained by the Foundation, using the values of the various lots used for real property tax purposes as a guide. The schedule cannot be entirely accurate because two new property lines were drawn (a portion of the southern boundary on Exhibit A and the northern boundary on Exhibit B of the land passing to The Nature Conservancy) which do not coincide with existing lot lines and thus are not reflected on the present tax maps, but we have done the best we could.

New tax maps will have to be prepared by the towns reflecting the new property lines. However, I understand that that need not delay the petition of TNC for tax exemption.

Enclosed is also a new copy of the corrected proposed deed to which should be attached the two surveys (Exhibits A and B) sent to you with my letter of May 18, 1973.

As you will see from the schedule attached to my memorandum of January 22, 1973, it gives the assessed values in the Towns of New Castle and North Castle (the schedule also gives the Section, Block and Lot numbers of the property located in North Castle which passes to the Foundation.

TNC000290

I shall send you tomorrow a copy of the old tax map, which lists all of Seven Springs Farm by Section, Block and Lot numbers. It is being reproduced overnight.

I also have for you copies of the surveys of the different parcels of Seven Springs Farm passing to (1) Yale, (2) TNC and (3) the Foundation. These surveys consist of several very large sheets and I shall be glad to mail them to you in a big roll or directly to the people who will handle the application for tax exemption. Please let me know.

I appreciate your call today and I hope to hear from you in respect of the agreement and letter before the end of the week.

Sincerely,

Christine Beshar
Christine Beshar

Wayne G. Jackson, Esq.,
The Nature Conservancy,
1800 North Kent Street - Suite 800,
Arlington, Virginia 22209.

Encls.

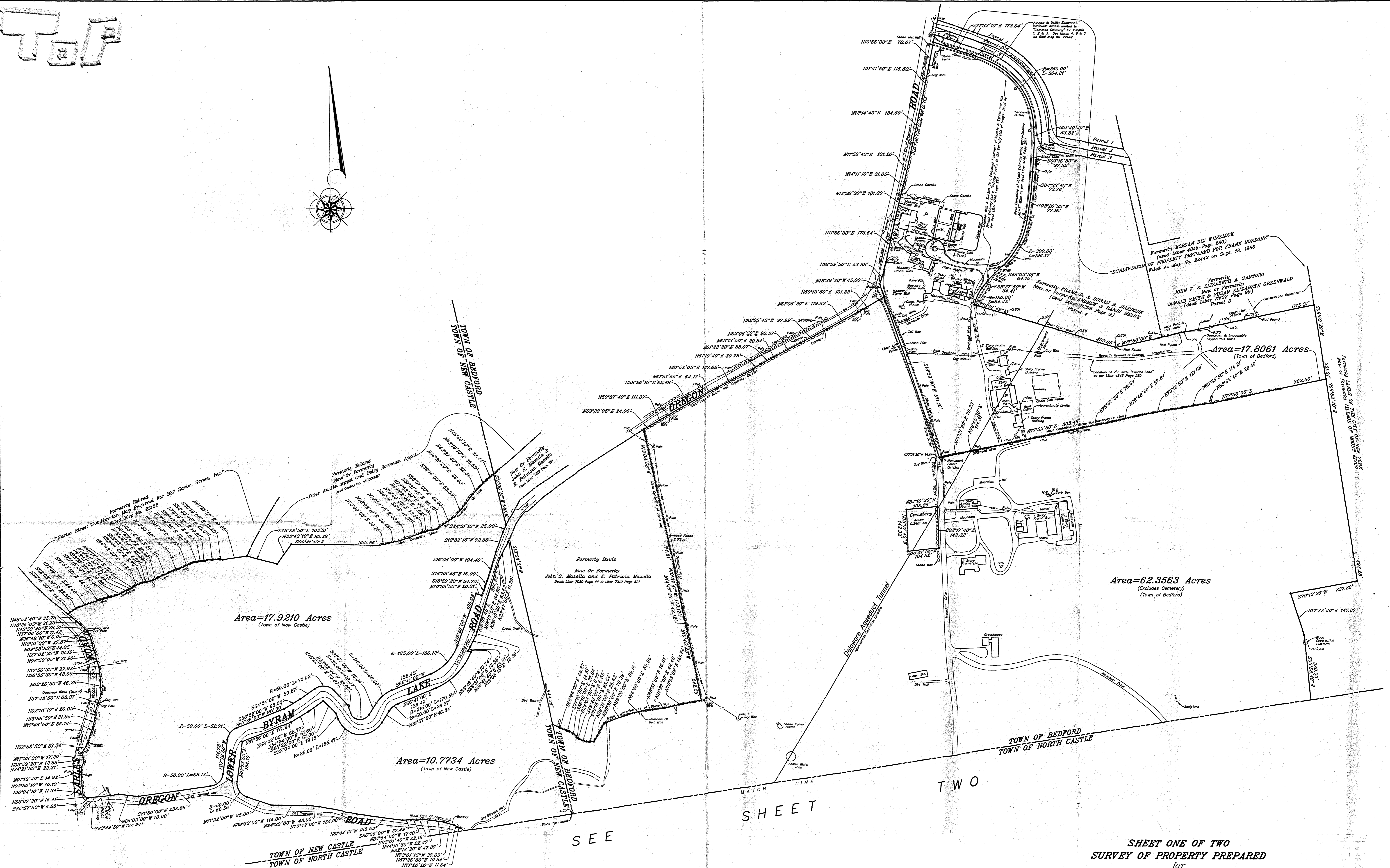
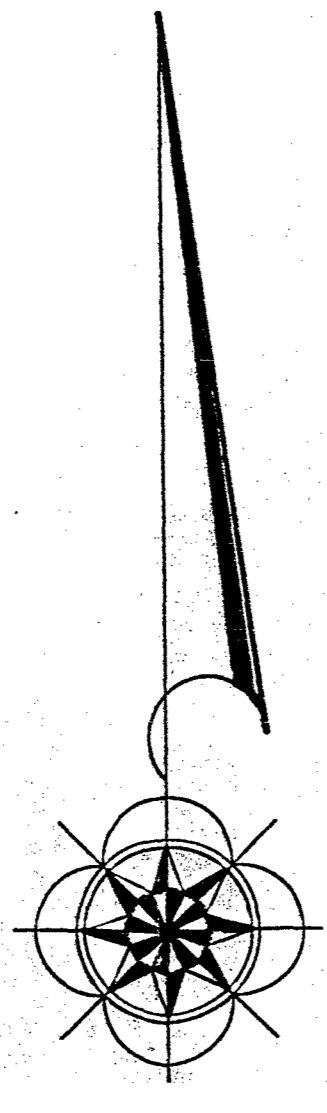
Copy to Davidson Sommers, Esq.,
Eugene and Agnes E. Meyer Foundation,
1730 Rhode Island Avenue, N. W.,
Washington, D. C. 20036.

8-A

TNC000291

N

T&E



NOTES:
 1. THE TOWN LINE AS SHOWN HEREON IS FROM A MAP ENTITLED "SURVEY OF TOWN LINE DETERMINATION LOCATED AT SEVEN SPRINGS" PREPARED BY DONALD D. DONNELLY, L.S. (DECEASED) DATED SEPT. 30, 1996.
 2. PAVEMENT, TRAVELED WAYS, AND SELECT INTERIOR BUILDINGS ARE DEPICTED BY AERIAL PHOTOGRAMMETRIC METHODS AND NOT FIELD SURVEYED. PHOTOGRAPHY DATED MARCH 24, 1995.

SURVEYORS CERTIFICATION
 COPYRIGHT © 2005, 2006 & 2009 DONNELLY LAND SURVEYING, P.C. ALL RIGHTS RESERVED

CERTIFICATIONS INDICATED HEREON SIGNIFY THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYS ADOPTED BY THE N.Y.S. ASSOC. OF PROFESSIONAL LAND SURVEYORS.

CERTIFICATIONS SHALL RUN ONLY TO THE PERSON FOR WHOM THIS SURVEY WAS PREPARED, AND ON HIS BEHALF TO THE TITLE OR LEASING INSTITUTION WHOSE SIGNATURE APPEARS HEREON.

CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS A VIOLATION OF N.Y.S. EDUC. LAW SECTION NO. 7209.

UNDERGROUND STRUCTURES, IF ANY, NOT SHOWN.

ALL CERTIFICATIONS ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF CAD MAP OR COPIES BEAR THE RED INKED SEAL OF THE SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

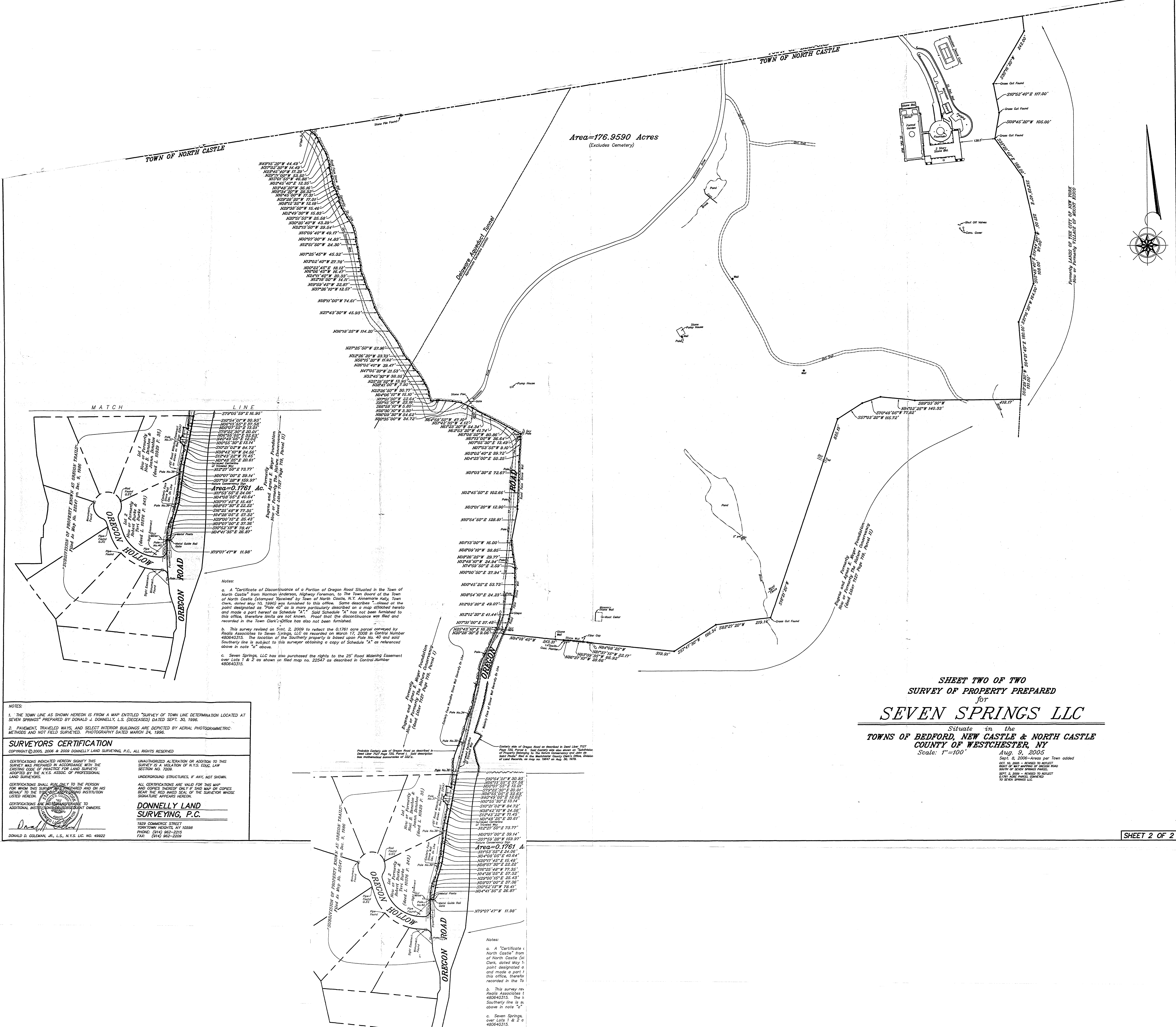
DONNELLY LAND SURVEYING, P.C.
 1229 COMMENCE STREET
 YORKTOWN HEIGHTS, NY 10598
 PHONE: (914) 962-2215
 FAX: (914) 962-2209

Area Schedule	
Town of Bedford (Excludes Cemetery)	=80.1624 Acres
Town of New Castle	=28.6944 Acres
Town of North Castle (Excludes Portion of Oregon Road)	=103.8293 Acres
Town of North Castle (Portion of Oregon Road)	=0.1761 Acres
Total Area (Excludes Cemetery)	=212.8622 Acres

SHEET ONE OF TWO
SURVEY OF PROPERTY PREPARED
 for
SEVEN SPRINGS LLC

Situate in the
TOWNS OF BEDFORD, NEW CASTLE & NORTH CASTLE
COUNTY OF WESTCHESTER, NY
 Scale: 1"=100'

Aug. 9, 2005
 Sept. 6, 2006 - Areas per Town added
 Oct. 16, 2006 - REVISED TO REFLECT
 RIGHT OF WAY MARKING OF OREGON ROAD
 SOUTH OF SEVEN SPRINGS PARCEL.
 Sept. 2, 2009 - REVISED TO REFLECT
 6.791 ACRE PARCELS COVERED
 BY SEVEN SPRINGS LLC.



Area=176.9590 Acres
(Excludes Cemetery)

SHEET TWO OF TWO
SURVEY OF PROPERTY PREPARED
for
SEVEN SPRINGS LLC
Situate in the
TOWNS OF BEDFORD, NEW CASTLE & NORTH CASTLE
COUNTY OF WESTCHESTER, NY
Scale: 1"=100'
Aug. 9, 2005
Sheet 2, 2006-Acreage per Town added
Oct. 15, 2005 - REVISED TO REFLECT
SOUTH OF NEW CASTLE OF OREGON ROAD
SOUTH OF SEVEN SPRINGS PARCEL
01/11/06 - REVISED TO REFLECT
01/11/06 PARCEL, CONTAINED
TO SEVEN SPRINGS LLC.

NOTES:
1. THE TOWN LINE, AS SHOWN HEREON IS FROM A MAP ENTITLED "SURVEY OF TOWN LINE DETERMINATION LOCATED AT SEVEN SPRINGS" PREPARED BY DONALD J. DONNELLY, L.S. (DECEASED) DATED SEPT. 30, 1996.
2. PAVEMENT, TRAVELED WAYS, AND SELECT INTERIOR BUILDINGS ARE DEPICTED BY AERIAL PHOTOGRAMMETRIC METHODS AND NOT FIELD SURVEYED. PHOTOGRAPHY DATED MARCH 24, 1996.

SURVEYORS CERTIFICATION
COPYRIGHT © 2005, 2006 & 2009 DONNELLY LAND SURVEYING, P.C., ALL RIGHTS RESERVED

CERTIFICATIONS INDICATED HEREON SIGNIFY THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYS ADOPTED BY THE N.Y.S. ASSOC. OF PROFESSIONAL LAND SURVEYORS.

CERTIFICATIONS SHALL RUN ONLY TO THE PERSON FOR WHOM THIS SURVEY WAS PREPARED AND ON HIS BEHALF TO THE INSTRUMENTING INSTITUTION LISTED HEREON.

CERTIFICATIONS ARE NON-TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUCCESSOR OWNERS.

UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS A VIOLATION OF N.Y.S. EDUC. LAW SECTION NO. 2209.

UNDERGROUND STRUCTURES, IF ANY, NOT SHOWN.

ALL CERTIFICATIONS ARE VALID FOR THIS MAP AND COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE RED INKED SEAL OF THE SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

DONNELLY LAND SURVEYING, P.C.
1929 COMMENCE STREET
YORKTOWN HEIGHTS, NY 10598
PHONE: (914) 962-2215
FAX: (914) 962-2209

DONALD D. COLEMAN, JR., L.S., N.Y.S. LIC. NO. 49922

Notes:
a. A "Certificate of Discontinuance of a Portion of Oregon Road Situated in the Town of North Castle" from Norman Anderson, Highway Foreman, to the Town Board of the Town of North Castle, (transcript received by Town of North Castle, N.Y. Attorney Kelly Town Clerk, dated May 10, 1990) was furnished to this office. Same describes "closed at the point designated as 'Pole 40' as is more particularly described on a map attached hereto and made a part hereof as Schedule 'A'." Said Schedule 'A' has not been furnished to this office, therefore limits are not known. Proof that the discontinuance was filed and recorded in the Town Clerk's Office has also not been furnished.
b. This survey revised on Smt. 2, 2006 to reflect the 0.1761 acre parcel surveyed by Reilly Associates to Seven Springs, LLC as recorded on March 17, 2005 in Control Number 480640315. The location of the Southern property is based upon Pole No. 40 and said Southern line is subject to this surveyor obtaining a copy of Schedule "A" as referenced above in note "a" above.
c. Seven Springs, LLC has also purchased the rights to the 25' Road Widening Easement over Lots 1 & 2 as shown on filed map no. 22547 as described in Control Number 480640315.

Notes:
a. A "Certificate of North Castle" from of North Castle (at Clerk, dated May 11, 1990) was furnished to this office, therefore limits are not known. Proof that the discontinuance was filed and recorded in the Town Clerk's Office has also not been furnished.
b. This survey revised on Smt. 2, 2006 to reflect the 0.1761 acre parcel surveyed by Reilly Associates to Seven Springs, LLC as recorded on March 17, 2005 in Control Number 480640315. The location of the Southern property is based upon Pole No. 40 and said Southern line is subject to this surveyor obtaining a copy of Schedule "A" as referenced above in note "a" above.
c. Seven Springs, LLC has also purchased the rights to the 25' Road Widening Easement over Lots 1 & 2 as shown on filed map no. 22547 as described in Control Number 480640315.

0

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

**PROPOSED ORDER OF
DISCONTINUANCE
AGAINST TOWN OF
NORTH CASTLE ONLY**

- against -

Index No.: 9130/06

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

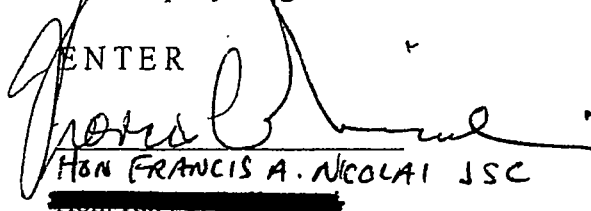
Defendants.
-----X

On reading and filing the Notice of Motion dated the 23rd day of April, 2009, the annexed Affirmation of Roland A. Baroni, Jr. sworn to April 23, 2009 in support of the within motion for an Order pursuant to CPLR §3217(b) discontinuing this action against defendant Town of North Castle, with due proof of service thereof,

NOW, upon the motion of Stephens, Baroni, Reilly & Lewis, attorneys for the Town of North Castle, it is

ORDERED, that the motion is granted, and it is further

ORDERED that the above-entitled action be and the same hereby is discontinued against the Town of North Castle, with prejudice and without costs to either party as against the other.

ENTER

HON FRANCIS A. NICOLAI JSC
[REDACTED]

Dated: JUNE 30, 2009
White Plains, New York

P

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

- against -

**STIPULATION OF
SETTLEMENT**

Index No.: 9130/2006

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.
-----X

SEVEN SPRINGS, LLC,

Plaintiff,

- against -

**STIPULATION OF
SETTLEMENT**

Index No.: 5484/2008

THE TOWN OF NORTH CASTLE,

Defendant.
-----X

WHEREAS, Plaintiff Seven Springs, LLC ("Plaintiff") has commenced the above-captioned actions against the Town of North Castle ("North Castle") and others (collectively with North Castle, "Defendants"), in relation to a dispute over ownership and easement rights to Oregon Road, which spans between the Towns of North Castle and New Castle ("Oregon Road");

WHEREAS, in and by the first action, Index No. 9130/06 (the "Declaratory Judgment Action"). Plaintiff sought quiet title to Oregon Road and claimed a right to utilize this road, and the Town of North Castle claimed that it had properly closed this road, effectively precluding any intended use of the road by the Plaintiff or any others;

WHEREAS, the other Defendants similarly contested Plaintiff's rights to Oregon Road;

WHEREAS, in and by the second action against Defendant North Castle, Index No. 5484/2008 (the "Damages Action") Plaintiff sought compensatory and punitive damages associated with an allegedly illegal interference with alleged property rights;

WHEREAS, during the past three years, the parties hereto have been engaged in lengthy, protracted and costly litigation over the issues raised in the Complaints herein; and

WHEREAS, in an effort to resolve the disputes and claims between Plaintiff and Defendant North Castle, the parties hereto have reached an agreement which compromises and settles both actions as they relate to Defendant North Castle.

IT IS NOW THEREFORE, STIPULATED AND AGREED, by and between Plaintiff and Defendant North Castle as follows:

I. DECLARATION AND FINDINGS:

That after lengthy negotiations and deliberation, the parties hereto declare and find that:

- A. It is in their best interests and in the best interests of the people of the Town of North Castle that the within actions be settled and discontinued on the terms and conditions hereinafter set forth.

B. Each of the parties hereto has the power and authority to enter into this Stipulation and upon the full and final execution thereof by the Supervisor of the Town of North Castle, on behalf of Defendant North Castle and the Town Board, and the respective attorneys for each said person, entity and party, this Stipulation shall be submitted to the Honorable Rory J. Bellantoni, Justice of the Supreme Court of the State of New York, for approval, and shall thereafter constitute an Order in the Declaratory Judgment Action (Index No. 9130/2006).

II. PLAINTIFF'S ACTIONS IN FURTHERANCE OF THIS STIPULATION:

- A. Plaintiff hereby withdraws in its entirety, discontinues, and dismisses with prejudice the Damages Action bearing Index No. 5484/2008.
- B. Plaintiff further discontinues and dismisses with prejudice, as against Defendant North Castle only, the Declaratory Judgment Action bearing Index No. 9130/2006.
- C. Plaintiff further releases Defendant North Castle of any and all actions, claims, causes of action, whether known or unknown, suspected or unsuspected, contingent or non-contingent, in law or in equity, based on state, local, federal, statutory or common law or any other law, rule or regulation, seeking compensatory, punitive or equitable relief, multiple damages or attorneys fees, based on Defendant North Castle's closing of Oregon Road as a public highway, the erection of a gate at Pole 40, or any other factual allegation as alleged in the Complaints in the Damages and Declaratory Judgment Actions.

D. Plaintiff will prepare and submit a revised proposal for the Seven Springs development project in the North Castle area, which will incorporate elements agreeable to, and in the mutual interests of, both the Plaintiff and Defendant North Castle and which application is expected to reasonably conform to the Code of the Town of North Castle.

E. During the course of review of said application, Plaintiff will undertake reasonable efforts in cooperation with Defendant North Castle to sustain a dialog with the Town of Bedford toward the goal of unifying Plaintiff's property by connecting the Bedford private road with the North Castle private road.

III. DEFENDANT NORTH CASTLE'S ACTIONS IN FURTHERANCE OF THIS STIPULATION:

A. Defendant North Castle agrees that it will not contest Plaintiff's position that it has easement rights over Oregon Road as shown in its title report.

B. Defendant North Castle will support the use of Oregon Road as a gated private road providing sole access to Plaintiff's North Castle property in connection with a revised subdivision application to be filed by Plaintiff with the North Castle Planning Board.

C. Defendant North Castle will provide reasonable cooperation to Plaintiff in connection with the on-going litigation against the remaining Defendants, including during the discovery process currently in progress.

- D. Defendant North Castle, by and through Supervisor Reese Berman, will participate with Plaintiff in the preparation of, and will jointly with Plaintiff issue, a mutually acceptable press release announcing this settlement.
- E. Defendant North Castle releases Plaintiff of any and all actions, claims, causes of action, whether known or unknown, suspected or unsuspected, contingent or non-contingent, in law or in equity, based on state, local, federal, statutory or common law or any other law, rule or regulation, seeking compensatory, punitive or equitable relief, multiple damages or attorneys fees, in connection with the Plaintiff's Damages Action bearing Index No. 5484/2008 and Plaintiff's Declaratory Judgment Action bearing Index No. 9130/2006.
- F. Once a Lead Agency has been designated for the purposes of SEQR review, Defendant North Castle will recommend to such Lead Agency that in accordance with SEQRA §617(8)(a), public scoping is not required for the revised subdivision application and that the public scoping document from the prior proposal for subdivision be utilized insofar as applicable to the property in North Castle.
- G. Defendant North Castle will also recommend to the Lead Agency that all of Plaintiff's work product done in pursuit of earlier applications of Plaintiff's North Castle property shall be incorporated therein, as appropriate, so as to avoid duplication of work or repetition of work in the new Draft Environmental Impact Statement.


IV. BOTH PARTIES UNDERSTANDINGS WITH RESPECT TO THIS STIPULATION.

- A. If the North Castle Planning Board is designated Lead Agency as required by SEQRA, North Castle will thoroughly and carefully, and in accordance with its statutory obligations, review Plaintiff's submission of a revised subdivision application and any additional approvals required in connection with the proposed development of the site in order to determine whether the proposed development of the site as therein provided for will have a significant impact upon the environment. It is specifically understood and agreed by and between the parties to this Stipulation that the subdivision application as herein contemplated is subject to and conditioned upon completion of all of the requirements of SEQRA, none of the issues of which have been predetermined by North Castle.
- B. It is understood that North Castle shall carry out the SEQRA review process in the spirit of §617.3(h) of SEQRA, which calls for "minimum procedural and administrative delay" and further specifies that agencies must expedite all SEQR proceedings in the interest of prompt review."
- C. In an effort to speed the completion of the review process, avoid confusion and resolve issues in the shortest period of time, North Castle will allow and encourage the Plaintiff, as Project Sponsor, to meet directly with the Town Planner, the Town Engineers and such other experts and/or consultants utilized by North Castle, as often as the need therefore may appear.

V. MISCELLANEOUS:

- A. The Plaintiff and Defendant North Castle agree that they are entering into this Stipulation in a spirit of cooperation, candor and for the achievement of common beneficial interests, and will process the forthcoming application in that spirit.
- B. The Supreme Court of the State of New York, County of Westchester by the Honorable Rory J. Bellantoni or such other Justices as may from time to time be designated, shall continue to exercise jurisdiction over this action for the purposes of periodic review to determine the progress of the within settlement and to specifically enforce those provisions of this Stipulation which are capable of specific enforcement to the extent permitted by law and of making such other or further orders or judgments as it finds appropriate under the circumstances existing at the time of such application.
- C. Both parties shall bear their own attorneys' fees, costs and expenses.
- D. This Stipulation may be executed in counterparts and photocopied signatures shall be treated as originals.

DELBELLO, DONNELLAN, WEINGARTEN,
WISE & WIEDERKEHR, LLP

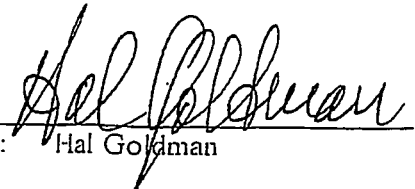

By: Alfred E. Donnellan, Esq.

Attorneys for Plaintiff

1 North Lexington Avenue
White Plains, New York 10601
(914) 682-0200

February 26, 2009

THE TRUMP ORGANIZATION AND
SEVEN SPRINGS, LLC


By: Hal Goldman

Vice President for Development
February 25, 2009

STEPHENS, BARONI, REILLY & LEWIS, LLP

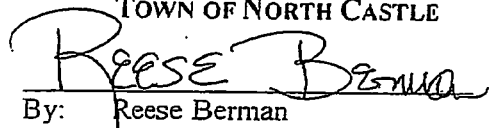

By: Roland A. Baroni, Jr., Esq.

Attorneys for Defendant North Castle

175 Main Street, Suite 800
White Plains, New York 10601
(914) 761-0300

February 25, 2009

TOWN OF NORTH CASTLE


By: Reese Berman

Town Supervisor,
Town of North Castle
February 25, 2009

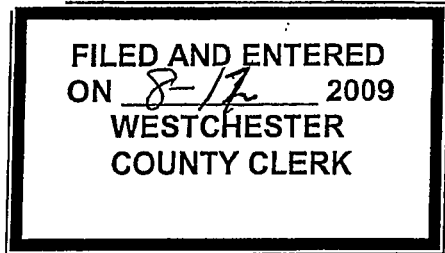
This Stipulation of Settlement is **SO ORDERED** at White Plains, New York this _____ day
of _____, 2009.

Hon. Rory J. Bellantoni, J.S.C.

Q



SUPREME COURT - S E OF NEW YORK
WESTCHESTER COUNTY



To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

PRESENT: HON. FRANCIS A. NICOLAI

Justice

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

Index No.: 9130/06
Motion Date: 7/22/09

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN DONOHOE,

DECISION

Defendants.
-----X

The following papers numbered 1 to 15 read on this motion.

PAPERS NUMBERED

Notice of Motion/Affirmations/Exhibits 1-3	1-5
Affirmation in Opposition/Exhibits 1-5, TNC	6-11
Reply Affirmation in Further Support/Exhibits A-B, Town	12-14
Reply Affidavit in Further Support, Plaintiff	15

Upon the foregoing papers, it is ORDERED that this motion by defendant, Town of North Castle ("Town") for an order pursuant to CPLR 3217(b) discontinuing this action with prejudice against defendant, Town, is decided as follows.

Plaintiff, Seven Springs, LLC and defendant, The Nature Conservancy ("TNC") own abutting parcels of land which, prior to 1973, were both owned by the Eugene and Agnes E. Meyer Foundation ("Foundation"). The large parcel owned by the Foundation included the land lying under and on either side of Oregon Road. Oregon Road apparently

became a town highway at some point in time by virtue of its having been used by the public as a highway for a period 10 years.

In January 1973, the Foundation conveyed the parcel now owned by plaintiff, a portion of land lying east and north of Oregon road, to Yale University. This parcel was subsequently conveyed to the plaintiff in 1995. In May 1973 the Foundation conveyed another portion of its land to TNC. Part of TNC's parcel lies on the west side of Oregon Road directly across the road from the plaintiff's parcel, and part of TNC's parcel lies under and around Oregon Road south of the plaintiff's parcel.

In 1990 the Town Board of the Town of North Castle caused a certificate of discontinuance to be filed in the town clerk's office purporting to close a portion of Oregon Road as it was no longer used for public travel.

Plaintiff commenced this action on May 15, 2006, its complaint seeking, inter alia, a determination that plaintiff has an easement over the portion of Oregon Road referred to in the certificate of discontinuance and owned in fee by TNC so that plaintiff can access a portion of Oregon Road south of the TNC parcel which was not closed to the public.

In February, 2009, plaintiff and defendant, Town entered into a stipulation settling the instant action and an action in this Court for money damages between plaintiff herein and the Town under Index # 5484/08, the said parties declaring that it is in their best interests and the best interests of the people of the Town to do so. Defendant, TNC and defendants, Robert Burke, Teri Burke, Noel Donohoe and Joanne Donohoe ("individual defendants") object to the settlement.

Herein, TNC seeks denial of the Town's motion or alternatively, the motion should be granted with conditions, inter alia, continuation of the preliminary injunction, removal of the gate by Court order only, the Town shall remain subject to discovery and share with non-settling defendants information received from plaintiff. TNC cites CPLR 3217(b) providing that an action shall not be discontinued by a party asserting a claim except upon order of the Court and upon terms and conditions, as the court deems proper. TNC contends that the settlement agreement between plaintiff and the Town eviscerates the Town's public actions and its prior positions taken in this litigation. The Town has agreed not to contest plaintiff's easement rights over Oregon Road and to support the use of Oregon Road as a gated road providing sole access to plaintiff's North Castle property. The Town is not likely to be even handed with all parties when it comes to providing access to the Town's information inasmuch as it has agreed to cooperate with plaintiff with respect to discovery in this action.

The Town should not be forced to continue costly litigation in which it has no stake; the road was properly closed in 1990. With respect to discovery, the non-settling defendants have non-party subpoenas and FOIL at their disposal. The Town has complied with its discovery obligation; no additional information is available. Further, there is a strong policy favoring enforcement of settlements and the Town should not be forced to continue being a party herein. Nor is the settlement merely an attempt to avoid a court order. See, Kaplan v. Village of Ossining, 35 AD 3d 816, cited by TNC and the Town.

The Court finds that defendant, TNC has failed to demonstrate special circumstances, such as a particular prejudice to TNC's substantial rights herein, or other improper consequences. See, Great Western Bank v. Terio, 200 AD2d 608, 609.

In the discretion of the Court, defendant, Town's motion is granted; plaintiff's action against the Town is dismissed with prejudice.

Insofar as the prior decision and order of this Court dated July 22, 2009, granted defendant, Town's motion as unopposed, said decision and order is recalled and denied as moot.

The foregoing constitutes the Decision and Order of this Court.

DATED: White Plains, New York
August 11, 2009

ENTER,


HON. FRANCIS A. NICOLAI, J.S.C.

TO: STEPHENS, BARONI, REILLY & LEWIS, LLP
Attorneys for The Town of North Castle
175 Main Street, Suite 800
North Court Building
White Plains, New York 10601

BENOWICH LAW, LLP
Attorneys for The Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604

OXMAN, TULIS, KIRKPATRICK, WHYATT & GEIGER
Attorneys for Mr. & Mrs. Burke and Mr. & Mrs. Donohoe
120 Bloomingdale Road
White Plains, New York 10601

DELBELLO, DONNELLAN, WEINGARTEN, WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601

R

API 201 2000m 9:33PM 1901 AMERICAN TITLE

PLEASE READ THESE TERMS CAREFULLY. THESE TERMS WILL APPLY TO ALL ORDERS. COMPANY AND INDIVIDUAL OR CORPORATION. CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT. THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

92-10-1206
6806
10576243
6/1
F-24-
COURT
L-102

THIS INSTRUMENT, made the 29th day of APRIL, nineteen hundred and ninety-three BETWEEN REALIS ASSOCIATES, A New York partnership, with offices at 356 Manville Road, Pleasantville, New York 10570

party of the first part, and ROBERT BURKE and TERI BURKE, husband and wife, both residing at 70 Davenport Farms Lane East, Stamford, Connecticut 06903

party of the second part,
WITNESSETH, that the party of the first part, in consideration of TEN and No/100 (\$10.00) dollars,
paid

lawful money of the United States,
by the party of the second part, doct hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate lying and being in the SEE SCHEDULE "A" - DESCRIPTION, ANNEXED HERETO.

SAID PREMISES being known on the Tax Assessment Map of the Town of North Castle as: Section 2, Block 5, Lot 1-2.

SUBJECT TO and assuming a mortgage made by New York Urban North II, Inc., in the amount of \$140,000.00 having a principal balance at the time of this conveyance of \$140,000.00, which mortgage the grantee hereby assume and agree to pay.

No right, title and interest in and to the streets are included in this sale, the same being reserved for dedication to the Town of North Castle. The party of the second part is hereby granted an easement of ingress and egress over Oregon Hollow Road, pending dedication of same.

SUBJECT TO a road widening easement for the future widening of Oregon Road approximately twenty-five (25') feet in width, along the westerly boundary line, said easement as shown on Subdivision Map of Property known as Oregon Trails, filed in the Westchester County Clerk's Office on December 9, 1986, as Map No. 25547.

1944
MCC-NFC-011-11-11

RECORDS & DOCUMENTS

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9310-01806

SCHEDULE A - DESCRIPTION

AMENDED 4/26/93

AMENDED 4/27/93

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 2 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas C. Merritts, L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547, said lot being bounded and described as follows:

Beginning a point on the northerly side of Oregon Hollow at the westerly end of a curve, having a radius of 25.00 feet which connects the westerly side of Oregon Road with the northerly side of Oregon Hollow;

RUNNING THENCE along the northerly and northeasterly side of Oregon Hollow the following 5 courses and distances:

- 1) North 85° 23' 30" West 14.63 feet to a point of curve,
- 2) Along a curve to the right having a radius of 150.00 feet, a central angle of 67° 13' 26", a distance of 175.99 feet to a point of tangency,
- 3) North 18° 10' 04" West 51.49 feet to a point of curve,
- 4) Along a curve to the right having a radius of 25.00 feet a central angle of 51° 19' 04", a distance of 22.39 feet to a point of reverse curve,
- 5) Along a curve to the left having a radius of 55.00 feet, a central angle of 52° 11' 39", a distance of 50.10 feet to the division line between Lot 1 and Lot 2 as shown on the above mentioned filed Map No. 22547;

THENCE along said division line North 64° 47' 39" East 255.98 feet to the westerly side of Oregon Road;

THENCE along the westerly side of Oregon Road the following 10 courses and distances:

DESCRIPTION

Poor Quality

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9210-01806

SCHEDULE A - DESCRIPTION
AMENDED 8/26/93
AMENDED 8/27/93

- 1) South 00° 07' West 20.18 feet;
- 2) South 11° 53' 55" West 24.06 feet;
- 3) South 04° 08' 05" West 40.64 feet;
- 4) South 20° 17' 45" West 15.48 feet;
- 5) South 02° 57' 30" West 22.22 feet;
- 6) South 14° 28' 05" West 57.32 feet;
- 7) South 29° 00' 15" West 25.43 feet;
- 8) South 09° 07' West 37.36 feet;
- 9) South 04° 41' 35" West 28.48 feet;
- 10) South 00° 47' 30" West 43.04 feet to a point of curve;

THENCE along a curve to the right having a radius of 25.00 feet a central angle of 93° 49', a distance of 40.93 feet to the northerly side of Oregon Hollow to the point and place of BEGINNING.,

TOGETHER with an easement of ingress and egress over Oregon Hollow to Oregon Road.

~~TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or assigns and assigns of the party of the second part forever.~~

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or assigns and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this instrument so requires. IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

In presence of:

Notary Public
for the State of New York
in and for the County of []
[]

REALTY ASSOCIATES

Susan Cavaliere
SUSAN CAVALIERE, Partner

George E. Cohen, Jr.
GEORGE COHEN, JR., Partner

Andrew J. Foye
ANDREW J. FOYE, Partner

On the 27th day of APRIL 19 93, before me personally came SUSAN CAVALIERE, GEORGE CROHN, Jr. and ANDREW J. FLORE, general partners in REALIS ASSOCIATES to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that they executed the same, and that they had authority to sign the same, and acknowledged to me that they joined same as the act and deed of said firm for the use and purposes therein mentioned.

On the day of 19, before me personally came to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that they executed the same.

Rita Bisacchino
Notary Public

RTA BISSACCHINO
NOTARY PUBLIC State of New York
No. 68-022521
Qualified in Westchester County
Commission Expires Dec. 31, 1994

STATE OF NEW YORK, COUNTY OF... On the day of 19, before me personally came... my that he resides at No. that he is the of the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed it thereunto by like order.

STATE OF NEW YORK, COUNTY OF... On the day of 19, before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed in name as witness thereto.

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACT
TITLE NO. 9210-01206
REALIS ASSOCIATES

TO
ROBERT BURKE and TERI M. BURKE

SECTION 2
BLOCK 5
LOT 1-2
COUNTY OR TOWN of North Castle,
Westchester County, New York
Executed at Request of
CHICAGO TITLE INSURANCE COMPANY

Return by Mail to

STAMPS FROM NY NEW YORK BOARD OF TITLE INSURANCE
Distributed by
CHICAGO TITLE
INSURANCE COMPANY

BLEAKLEY PLATT & SCARFOT
ATTY JOSEPH GLATYAR
ONE NORTH LEXINGTON AVE
PO. BOX 5056
WHITE PLAINS N.Y. 10602-5056

RECORDING OFFICE OF WESTCHESTER COUNTY

S

Record Form No. 1007
Form 9417-4-88 IN compliance with Sec. 241, with Consent of the County Clerk of Westchester. 9416-613
CONDUIT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

FS 724

THIS INSTRUMENT, made the 27th day of July, nineteen hundred and ninety-four.
BETWEEN

REALIS ASSOCIATES, a New York Partnership with offices at
356 Munville Road, Pleasantville, NY 10570

party of the first part, and

NOEL B. DONOHUE & JOANN DONOHUE, husband and wife, both residing at
32 Harney Road, Scarsdale, NY 10583

4 Oregon Hollow
Armonk, NY

party of the second part,

WITNESSETH, that the party of the first part, in consideration of \$10.00

_____ dollars,
lawful money of the United States. _____ paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs of
successors and assigns of the party of the second part forever.

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate,
lying and being in the Town of North Castle, County of Westchester, State of New York,
as shown on Description annexed hereto, as Exhibit "A".

Also known on the Tax Assessment Map of the Town of North Castle as Section 2,
Block S, Lot 1-1.

BEING a portion of the premises acquired by the grantor by deed dated June 28,
1988 and recorded on July 7, 1988 in Liber 9236, pp 287.

The party of the second part is granted an easement to use the roads as shown
on the subdivision map in Schedule A annexed hereto for ingress and egress to
the nearest public road.

No right title or interest into any of the roads abutting the premises herein
are included in this conveyance, the same being reserved for dedication to the
Town of North Castle.

Reserving to the party of the first part for the purpose of dedicating to the
Town of North Castle, a twenty-five foot road widening easement, as shown on
Map No. 22547, the future widening of Oregon Road. Seller retains this easement
for purposes of dedication to the Town of North Castle.

TAXMAP
DESIGNATION
Dtc.
Sec. 2
Blk. 5
Lot(s) 1-1

CHICAGO TITLE INSURANCE COMPANY
SCHEDULE A DESCRIPTION

Title No: 9410-00613

AMENDED

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 1 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas C. Marxits, L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547 being bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Hollow where the same is intersected by the division line between Lots 1 and 2 on said map;

THENCE in a northwesterly direction along the easterly side of Oregon Hollow on a curve to the left having a radius of 55.00 feet a distance of 42.86 feet to the division line between Lots 1 and 20 on said map;

THENCE along the division line between Lots 1 and 20,

North 21° 36' 54" East, 331.49 feet to lands now or formerly of Eugene and Agnes E. Meyer Foundation on said map;

THENCE along said lands now or formerly of Eugene and Agnes E. Meyer Foundation,

North 89° 34' 30" East, 176.42 feet to the westerly side of Oregon Road on said map;

THENCE along the westerly side of Oregon Road,

South 6° 13' 55" West, 37.58 feet;
South 0° 07' 55" West, 13.01 feet;
North 79° 22' 30" West, 20.01 feet;
South 6° 55' 05" West, 32.63 feet;
South 40° 49' 05" West, 12.02 feet;
South 10° 55' 30" West, 13.14 feet;
South 38° 42' 10" East, 24.56 feet;
South 1° 48' 25" West, 20.61 feet;
South 12° 27' 50" West, 73.77 feet; and
South 0° 07' 00" West, 18.96 feet to the division line between Lots 1 and 2 on said map;

THENCE along the division line between Lots 1 and 2,

South 64° 47' 39" West, 255.98 feet to the easterly side of Oregon Hollow, the point and place of BEGINNING.

~~TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.~~

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

In presence of:

REALTY ASSOCIATES

By: 
ANDREW J. FITCH, Partner

STATE OF NEW YORK, COUNTY OF

STATE OF NEW YORK, COUNTY OF

On the day of 19 , before me personally came

On the day of 19 , before me personally came

in me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

in me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF WESTCHESTER

STATE OF NEW YORK, COUNTY OF

On the 27th day of July 1994, before me personally came ANDREW J. PIGRE to me known, who, being by me duly sworn, did depose and say that he resides at No. One Pioneer Trail, Armonk, NY 10504;

On the day of 19 , before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he is also a General Partner of REALIS ASSOCIATES, the partnership described in and which executed the foregoing instrument; that he is also a General Partner of REALIS ASSOCIATES, the partnership described in and which executed the foregoing instrument; that he had authority to sign same and acknowledged to me that he executed the same as the act and deed of said firm for the uses and purposes therein mentioned.

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness therein.

Abraham C. Bein
Notary Public

5610 6/4
Commission Expires
Qualified in Westchester County
State of New York No. 80-0286478
ABRAHAM C. BEIN
ATTORNEY AND NOTARY PUBLIC

ABRAHAM C. BEIN
ATTORNEY AND NOTARY PUBLIC
State of New York No. 80-0286478
Qualified in Westchester County
Commission Expires 6/30/95

Marjorie Ann Eagle Beach
WITH COVENANT AGAINST GRANTOR'S ACTS
Title No. 9410-613

SECTION 2
BLOCK 5
LOT 1-1
MUNICIPALITY TOWN OF NORTH CASTLE
TAX BILLING ADDRESS -
COUNTY - WESTCHESTER

REALIS ASSOCIATES
TO
NOEL B. DONOHUE & JOANN DONOHUE

Recorded at Request of First American Title Company
EXEMPT BY MAIL PER

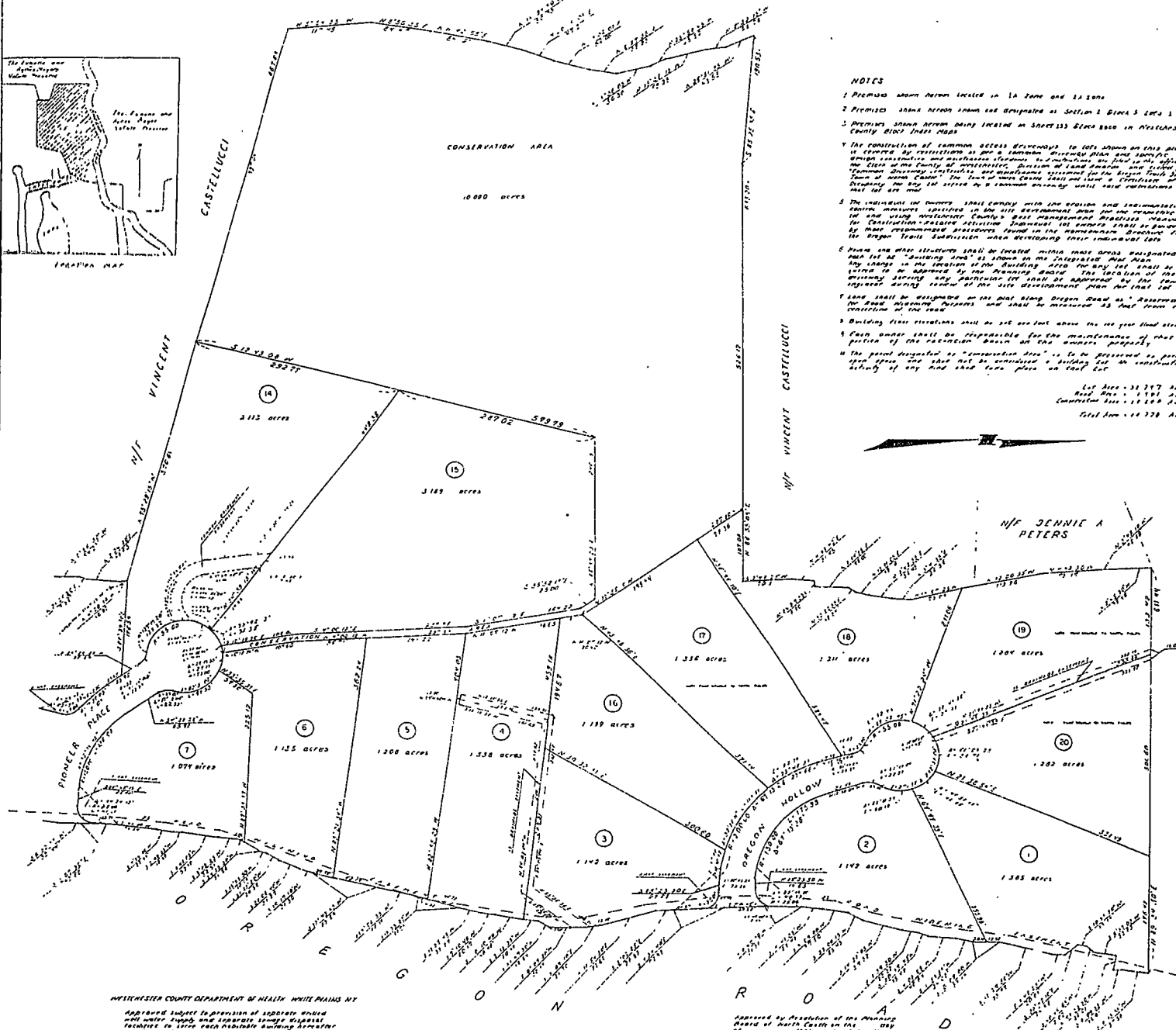
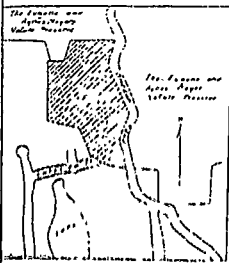
Guaranteed by

TICOR TITLE GUARANTEE

MARIO SCLAFANI, ESQ.
27 TWIN LAKES ROAD
SOUTH SALEM, NY 10590

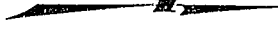
T

H/F V. GREEN: CASTELLUCCI.



- NOTES**
1. Premises shown herein located in 1A Zone and 1A Zone.
 2. Premises shown herein shown and designated as Section 1 Block 5 Lots 1.
 3. Premises shown herein being located in Section 133 Block 5 in Westchester County Block Index Maps.
 4. The construction of common access driveways to lots shown on this map is to be completed by the owner of the common driveway area and shall be subject to the approval of the County of Westchester, Division of Land Planning and Zoning. The design, construction and maintenance of the common access driveways shall be subject to the approval of the County of Westchester, Division of Land Planning and Zoning.
 5. The individual lot owners shall comply with the erosion and sedimentation control measures specified in the site development plan for the proposed lot and shall maintain the same until such time as the County of Westchester, Division of Land Planning and Zoning shall be satisfied that the erosion and sedimentation control measures are being maintained.
 6. Plans and other documents shall be located within these areas designated on this map as "Building Area" as shown on the "Integrated Site Plan" and shall be subject to the approval of the Planning Board. The location of the driveway access and driveway shall be approved by the Planning Board during review of the site development plan for that lot.
 7. Lots shall be designated as "Open Space" as shown on the "Integrated Site Plan" and shall be maintained as such until such time as the County of Westchester, Division of Land Planning and Zoning shall be satisfied that the open space is being maintained.
 8. Building floor elevations shall be set on foot above the 100 year flood stage.
 9. Each owner shall be responsible for the maintenance of that portion of the driveway shown on the "Integrated Site Plan".
 10. The parcel designated as "Conservation Area" is to be preserved as such and shall not be subdivided or used for any other purpose.

Lot Area = 31,777 Acres
 Area of Block = 1,194 Acres
 Conservation Area = 1,668 Acres
 Total Area = 44,728 Acres



WESTCHESTER COUNTY DEPARTMENT OF HEALTH WHITE PLAINS NY

Approved subject to provision of separate utility and water supply and separate sewage disposal facilities to serve each individual building developed hereunder to be installed in accordance with engineering plans on file with the Department and with plans and specifications duly approved and filed in this office prior to the construction of such building.

Any variance, change, addition or alteration of any kind, except the addition of signatures of the owner, contractor, engineer and the date thereof on the plan after the date of this approval shall constitute the approval of the Department.

Each purchaser of property shown herein shall be furnished a true copy of map showing this subdivision.

DEC 3 1988
 22517
 10

SUBDIVISION OF PROPERTY
 KNOWN AS
OREGON TRAILS
 SITUATE WITHIN
 TOWN OF NORTH CASTLE
 WESTCHESTER COUNTY, NEW YORK

Approved by Resolution of the Planning Board of North Castle on the 10th day of May, 1988, subject to all of the provisions and conditions of this Resolution and changes, if any, modifications or amendments thereto as approved shall read this:

Signed this 22nd day of November, 1988
 [Signature]
 [Title]
 [Address]

RAILROAD AND DOCK ENGINEERS, PC
 TOWN ENGINEER

Recommended by
 [Signature]
 [Title]
 [Address]

Filed in the Office of the County Clerk of Westchester County, New York, on this 22nd day of November, 1988.
 [Signature]
 [Title]

Scale: 1" = 100'
 100' 0" 50' 0" 0' 0" 50' 0" 100' 0"



This is to certify that the Survey herein shown this map is based on the original survey of the land shown hereon and that this map was recorded on 11/22/1988.
 [Signature]
 New York State Licensed Land Surveyor No. 08518

Approved by the City of the Westchester County Clerk's Office, Division of Land Records
 [Signature]
 [Title]
 [Address]

u

DEED

THIS INDENTURE, made the 17th day of JUNE, two thousand and six

BETWEEN

REALIS ASSOCIATES, a New York Partnership, with offices at
356 Manville Road
Pleasantville, New York 10570

party of the first part, and

SEVEN SPRINGS, LLC with offices at
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, being more particularly bounded and described as follows:

SEE ATTACHED SCHEDULE "A"

SAID premises being known as part of Oregon Road, North Castle, New York.

TOGETHER, with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

The premises being conveyed are, and are intended to be, the same premises retained by the party of the first part as set forth in deed from Realis Associates to Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in liber 10576 page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

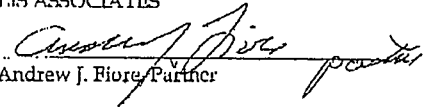
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

REALIS ASSOCIATES

By: 
Andrew J. Fiore, Partner

STATE OF NEW YORK)
)
) SS.:
)
COUNTY OF WESTCHESTER)

On the 12th day of June in the year 2006 before me, the undersigned, personally appeared ANDREW J. FIORR personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Eileen M. Acosta
Signature and Office of individual taking acknowledgment
EILEEN M. ACOSTA
Notary Public, State of New York
No. 01AC8010118
Qualified in Orange County
Commission Expires July 13, 20 06

DFED

REALIS ASSOCIATES

TO

SEVEN SPRINGS, LLC

TOWN OF NORTH CASTLE
COUNTY OF WESTCHESTER
Tax Map Designation:

Section
Block
Lot

Return by Mail to
DelBello Donnellan Weingarten Tartaglia
Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601

Schedule "A"

All that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, and State of New York adjacent to the easterly boundary line of the parcel identified on the tax assessment map of the Town of North Castle as Section 2, Block 5, Lot 1.2, and more particularly described on Exhibit "1A" annexed hereto, to the center line of the road known as Oregon Road, and adjacent to the easterly boundary line of the parcel identified on the tax assessment map of the Town of North Castle as Section 2, Block 5, Lot 1-1, and more particularly described on Exhibit "1B" annexed hereto, to the center line of the road known as Oregon Road, together with a road widening easement for the future widening of Oregon Road approximately twenty-five (25) feet in width, along the easterly boundary line, said easement as shown on Subdivision Map of Property known as Oregon Trails, filed in the Westchester County Clerk's Office on December 9, 1986, as Map No. 22547.

EXHIBIT 1A

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9310-01806

SCHEDULE A - DESCRIPTION
AMENDED 4/26/93
AMENDED 6/27/93

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 2 on a certain map entitled, "Subdivision of Property known as Oregon Tralle situate in the Town of North Castle, Westchester County, New York", made by Thomas G. Merritts, L.S. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547, said lot being bounded and described as follows:

Beginning a point on the northerly side of Oregon Hollow at the westerly end of a curve, having a radius of 25.00 feet which connects the westerly side of Oregon Road with the northerly side of Oregon

Hollow the following 5 courses and distances:

- 1) North 85° 23' 30" West 14.63 feet to a point of curve.
- 2) Along a curve to the right having a radius of 150.00 feet, a central angle of 67° 13' 26", a distance of 175.99 feet to a point of tangency.
- 3) North 18° 10' 04" West 31.43 feet to a point of curve.
- 4) Along a curve to the right having a radius of 25.00 feet a central angle of 51° 19' 04", a distance of 22.39 feet to a point of reverse curve.
- 5) Along a curve to the left having a radius of 33.00 feet, a central angle of 52° 11' 39", a distance of 50.10 feet to the division line between Lot 1 and Lot 2 as shown on the above mentioned filed Map No. 22547;

THENCE along said division line North 64° 47' 39" East 255.98 feet to the westerly side of Oregon Road;

THENCE along the westerly side of Oregon Road the following 10 courses and distances:

DESCRIPTION

09/19/2000 17:09 FAX

APR 26 2003 4:58PM (KRS) AMERICAN TITLE

004

CHICAGO TITLE INSURANCE COMPANY

TITLE NO: 9210-01806

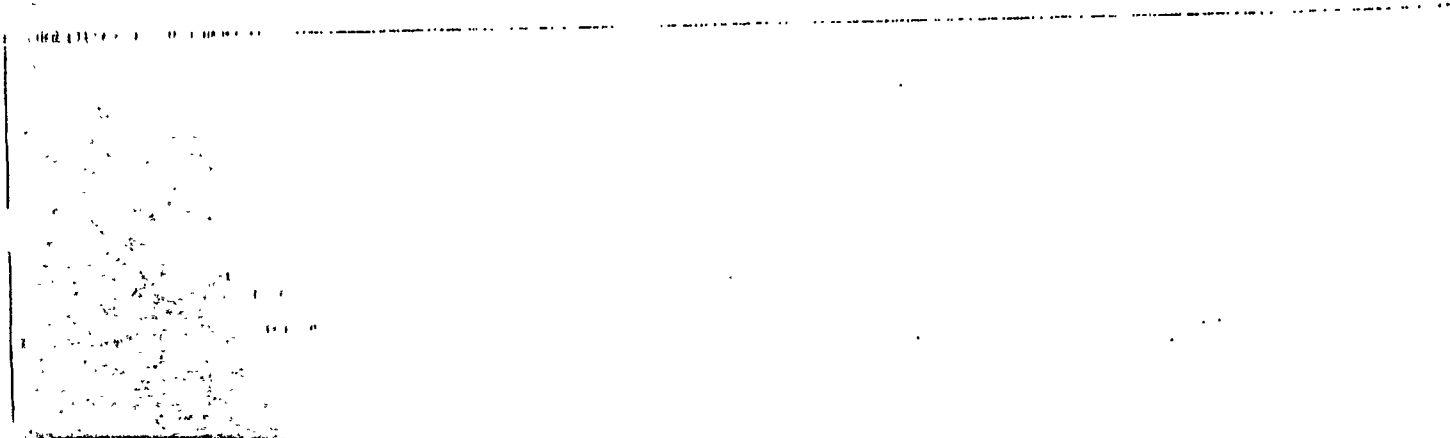
SCHEDULE A DESCRIPTION
AMENDED 12/26/93
AMENDED 10/27/93

- 1) South 00° 07' West 20.18 feet;
- 2) South 11° 53' 55" West 24.06 feet;
- 3) South 04° 08' 05" West 40.64 feet;
- 4) South 20° 17' 45" West 15.48 feet;
- 5) South 08° 57' 30" West 22.22 feet;
- 6) South 14° 28' 05" West 57.32 feet;
- 7) South 29° 00' 15" West 25.43 feet;
- 8) South 59° 07' West 37.36 feet;
- 9) South 04° 21' 35" West 28.48 feet;
- 10) South 00° 47' 30" West 43.04 feet to a point of curve;

THENCE along a curve to the right having a radius of 25.00 feet a central angle of 93° 49', a distance of 40.93 feet to the northerly side of Oregon Hollow to the point and place of BEGINNING.

TOGETHER with an easement of ingress and egress over Dragon Hollow to Dragon Road.

EXHIBIT 1B



CHICAGO TITLE INSURANCE COMPANY SCHEDULE A DESCRIPTION

Title No: 9410-00613

RESUMED

All that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester and State of New York, shown and designated as Lot 1 on a certain map entitled, "Subdivision of Property known as Oregon Trails situate in the Town of North Castle, Westchester County, New York", made by Thomas C. Maxwell, P.E. dated June 27, 1986 and filed in the Office of the Clerk of the County of Westchester, Division of Land Records, on December 9, 1986 as Map Number 22547 being bounded and described as follows:

BEGINNING at a point on the easterly side of Oregon Hollow where the same is intersected by the division line between Lots 1 and 2 on said map;

THENCE in a northwesterly direction along the easterly side of Oregon Hollow on a curve to the left having a radius of 85.00 feet a distance of 42.86 feet to the division line between Lots 1 and 20 on said map;

THENCE along the division line between Lots 1 and 20,

North 21° 36' 54" East, 331.49 feet to lands now or formerly of Eugene and Agnes E. Meyer Foundation on said map;

THENCE along said lands now or formerly of Eugene and Agnes E. Meyer Foundation,

North 89° 34' 30" East, 176.42 feet to the westerly side of Oregon Road on said map;

THENCE along the westerly side of Oregon Road,

South 8° 14' 58" West, 37.58 feet;

South 0° 07' 55" West, 13.01 feet;

North 79° 22' 20" West, 20.01 feet;

South 8° 58' 05" West, 32.63 feet;

South 40° 49' 05" West, 12.02 feet;

South 10° 55' 30" West, 13.14 feet;

South 98° 42' 10" East, 24.58 feet;

South 1° 48' 25" West, 30.61 feet;

South 12° 27' 50" West, 73.77 feet; and

South 0° 07' 05" West, 18.96 feet to the division line between Lots 1 and 2 on said map;

THENCE along the division line between Lots 1 and 2;

South 54° 27' 39" West, 255.88 feet to the easterly side of Oregon Hollow, the point and place of **BEGINNING**.



V

25



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

August 15, 2006

Bradley Wank, Esq.
DelBello, Donellan, et al.
One North Lexington Avenue
White Plains, New York 10606

RE: Oregon Road, T/O North Castle
Our Title No.: 552581-W

Dear Mr. Wank:

With reference to the above cited matter, this Company hereby reports and certifies the foregoing information as of April 26, 2006 from the records located at the Westchester County Clerk's Office in the Division of Land Records:

I.

1. The deeds recorded in Liber 1589 cp 75 on October 5, 1901, Liber 1731 cp 358 on December 28, 1905 and in Liber 1786 cp 454 on January 24, 1907, cover a portion of the entire bed of Oregon Road. The deed into Meyer as recorded in Liber 1884 cp 24 on August 3, 1909 mirrors the description into Fox as recorded in Liber 1786 cp 454 on January 24, 1907 as referenced above. These deeds cover the southerly portion of said roadway as shown on the Donnelly survey dated August 9, 2005, "The Donnelly Land Survey" a copy of which is annexed hereto as Exhibit "A" and which is also outlined on the diagram from the 1930 atlas map filed in the Westchester County Clerk's Office annexed hereto as Exhibit "B" and outlined in yellow.
2. The deeds recorded in Liber 2302 cp 462 on August 15, 1921, Liber 2305 cp 189 on April 29, 1921, Liber 2460 cp 221 on October 19, 1923 and in Liber 2703 cp 171 on September 16, 1926 cover a portion of the southerly portion of said roadway, as well as a portion of said roadway north of said southerly portion of the roadway. Said roadway portions are outlined on the 1930 atlas in both yellow and blue.
3. The deeds recorded in Liber 2669 cp 78 on May 14, 1926, Liber 3036 cp 121 on May 16, 1930 and in Liber 5019 cp 218 on September 4, 1951 cover that portion of the roadway immediately north of the southerly portion of the road as outlined in Nos. 1 and 2 above, which are also outlined on the 1930 atlas in both yellow and blue.

**Poor
Quality**



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

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4. The deeds recorded in Liber 1719 cp 418 on September 29, 1905, Liber 1770 cp 321 on September 29, 1906, Liber 2116 cp 269 on May 31, 1916, Liber 2116 cp 315 on June 5, 1916, Liber 1731 cp 345 on December 28, 1905, Liber 1823 cp 312 on November 30, 1907 and Liber 1884 cp 24 on August 3, 1909 cover the balance of the northerly portion of the roadway as shown on the Donnelly Land Survey and the atlas diagram referenced above. Said property is outlined on said atlas in both green and red.

By virtue of the foregoing deeds, Eugene Meyer or Eugene Meyer, Jr. had acquired fee title to the entire bed of Oregon Road as shown on the Donnelly survey. Specifically, those source deeds gave Meyer a fee title interest in and to the bed of Oregon Road. The deed from Fox to Meyer as recorded in Liber 1884 cp 24 on August 3, 1909 has conveyancing language to the center line of said roadway as well as the "together with" streets rights language in that deed.

The deed from Livermore to Meyer as recorded in Liber 2703 cp 171 on September 16, 1926 conveyed the fee title interest in and to the property on both sides of Oregon Road and said deed also contains the "together with" street clause in that deed as well. The deed from Norcast Realty to Meyer as recorded in Liber 5019 cp 218 on September 4, 1951 contains a description of land which encompasses the entire bed of Oregon Road due to the fact that said Schedule A description specifically crosses and identifies Oregon Road. Said deed also contains the streets rights clause.

The deed from Fitzpatrick to Meyer recorded in Liber 2116 cp 315 on June 5, 1916 runs to the center line of the roadway with the addition of the streets rights clause in that deed as well. Finally, the deed from Fox to Meyer recorded in Liber 1884 cp 24 on August 3, 1909 contains the other portion of the centerline of the roadway as well as the streets rights clause in that deed. As such, and based upon the foregoing Meyer had fee title to the entire bed of Oregon Road.

5. By deed dated January 19, 1973, which deed was recorded in Liber 7115 cp 577 on March 27, 1973, The Eugene and Agnes Meyer Foundation (The "Meyer Foundation") conveyed to Yale University. Parcel II in said deed runs along the easterly and northerly side of Oregon Road and this deed also contains the together with the streets clause. This deed is the predecessor to Seven Springs LLC.
6. The next deed conveyance is from Yale University to Seven Springs Farm Center, Inc. as recorded in Liber 7115 cp 592 on March 27, 1973 which contains the same legal description in the deed described in No. 5 above.

**Poor
Quality**



Fidelity National Title

INSURANCE COMPANY OF NEW YORK

Page 3

7. Seven Springs then conveyed said property to The Rockefeller University as recorded in Liber 7923 cp 639 on May 24, 1984 with the same legal description as set forth in Nos. 5 and 6 above.
8. Rockefeller University then conveyed to Seven Springs LLC, the current owner with the same language as set forth in Nos. 5 through 7 above. Said deed was recorded in Liber 11325 cp 243 on December 28, 1995.

Therefore, based upon our analysis of the above referenced deeds, the legal descriptions and the "together with the streets" clauses contained therein, this Company concluded that Seven Springs LLC had fee title in and to the ½ portion of Oregon Road, as same street/roadway abuts said property on its westerly side. Also, this Company concluded that Seven Springs enjoys a non-exclusive private easement as it abuts the property it owns as well as over lands owned by the Nature Conservancy and others to the public portion of Oregon Road to the south

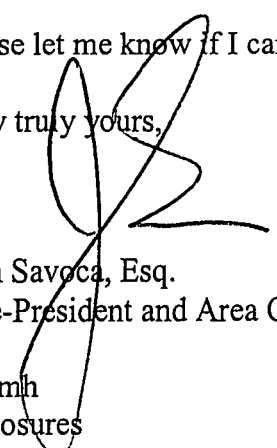
II.

We have also examined the chain of title to the property now owned by the Nature Conservancy. Their source deed came from the Meyer Foundation to the Nature Conservancy by deed recorded in Liber 7127 cp 719 on May 30, 1973. Parcel I in that deed includes the ½ interest of the westerly portion of the roadway, and Parcel II includes that ½ interest of the southerly and easterly portions of said roadway and which deed also contains the together with the streets clause. The Nature Conservancy still currently owns said property.

No searches have been made other than as expressly stated above. The Company's liability under this Certificate shall only be to the party to whom it is certified and such liability shall under no circumstances exceed the amount of Five Thousand Dollars (\$5,000.00) and no policy of title insurance can be issued based upon the information contained in this Certificate.

Please let me know if I can be of any further assistance.

Very truly yours,


John Savoca, Esq.
Vice-President and Area Counsel

JS/gmh
Enclosures

**Poor
Quality**

W

26

0027008

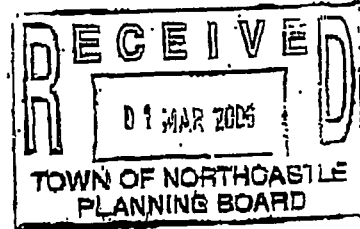
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MAR-09-2006 12:54

TOWN OF NORTH CASTLE

FIDELITY TITLE LTD.
62 June Road
P. O. Box 512
North Salem, NY 10560-0512
Phone: 914-669-0015 Fax: 914-669-0018

Agent For:



February 16, 2006

Stephen Baroni, Reilly & Lewis, LLP
175 Main Street
White Plains, New York 10601
Attention: Roland A. Baroni, Jr., Esq.

Re: Our Title No.: FY06-8555W
Title/Easement Search on the abandoned
part of Oregon Road, Town of North Castle

Dear Mr. Baroni:

You have requested that this company search the chain of title to the abandoned portion of Oregon Road, specifically for easement and access rights in favor of Seven Springs, LLC over same. We researched not only the deeds for Oregon Road but also for the abutting owners including the Seven Springs parcel on the easterly side of the abandoned part of Oregon Road.

As a general rule public highways are burdened by both easements of the public which are ordinary and traditional highway uses; and also of private easements held by the abutting owners for access, light and air. A street closing by the municipality does not affect these private easements. (Schonleben v. Swain, 130 App. Div. 521, aff'd 198 N.Y. 621). The rule concerning private easements by abutting owners is not universal. Where the street is owned in fee by the municipality, private easements do not exist. (see Warren's Wood New York Real Property, "Streets and Highways" §9.02).

The New York State Courts have held that private easements arise where title to both the land in the bed of the street and abutting parcels derive from a common owner. (Low v. Humble Oil & Ref. Co., 51 Misc 2d 281, 273 N.Y.S. 2d 85, modified 27 A.D. 629, 276 N.Y.S 2d 55). (Dworkin v. State of New York 251 App. Div. 675, aff'd 289 N.Y. 597).

P0549

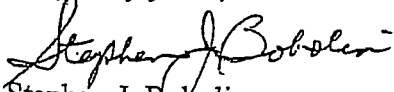
Poor Quality

My research indicates that fee title to the bed of the abandoned portion of Oregon Road was never held by the Town of North Castle. I found no deed of dedication into the Town of North Castle. It appears that Oregon Road became a Town road by virtue of prescriptive use as it was used in the past as a highway by the public continuously for 10 or more years (see N.Y. Highway Law §189). Accordingly, I searched the title to the bed of the abandoned portion of Oregon Road and the adjoining owners to ascertain whether there was in fact one common owner.

Title was searched back to the early 1900's. By a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer Jr. acquired an assemblage of over 300 acres of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both the Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common owner, Eugene Meyer, Jr.. Although none of the deeds in the chain of title subsequent to Meyer included the abandoned portion of Oregon Road by metes and bounds, it was not excepted and the deeds all included the appurtenance clause "Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof".

Please note the legal descriptions contained in the deeds into Meyer did not run along the sides of the abandoned portion of Oregon Road but included Oregon Road by metes and bounds. Based upon the state of title that Eugene Meyer, Jr. was the common owner of both the abandoned portion of Oregon Road and the abutting land now owned by the Nature Conservancy and Seven Springs, LLC it is my opinion in accordance with case law, Seven Springs, LLC does have a private easement for access over the abandoned portion of Oregon Road. This letter shall not be construed to be a policy of title insurance. Liability shall be limited to the amount of fees paid for this search and opinion of title.

Very truly yours,



Stephen J. Bobolia
President

SJB/cs

X



Fidelity National Title Insurance Company

Jonathan A. Richards
Senior Vice President
& Regional Counsel

Direct Dial: 212.471.3751
Direct Fax: 212.448.0613

E-Mail: jrichards@fnf.com

November 15, 2005

Jason D. Greenblatt, Esq.
The Trump Organization
725 Fifth Avenue
New York, NY 10022

Re: Seven Springs
Woodside, Oregon Road &
Lower Byram Lake Road
Mt. Kisco, New York
Seven Springs, LLC

Gentlemen:

In connection with the property captioned above, we have examined title to the premises known as "Seven Springs" and in particular the question of rights of the current owner Seven Springs, LLC in respect to Oregon Road which abuts that property on its westerly boundary. Based upon that examination we have concluded that title to the property owned by Seven Springs, LLC ("LLC") includes the fee title to one-half the bed of Oregon Road which abuts the westerly boundary of LLC's parcel as the same is described in the deed by which LLC acquired title and is recorded in Liber 11325 at page 243, a copy of which is attached.

In addition, we have determined that the LLC also enjoys a non-exclusive private easement in Oregon Road as it abuts its property and continues past property formerly owned by the common owner of Oregon Road, the Eugene and Agnes E. Meyer Foundation, lands now owned by the Nature Conservancy and others, to the public portion of Oregon Road to the south.

Accordingly, this company has agreed that it will insure LLC's fee title and easement rights as described above and include the following language in any policy issued to the LLC or to any affiliate of LLC or any other company owned, in whole or in part, by Donald J. Trump (each, an "Affiliate").

Schedule A of the policy will include the following language:



**Fidelity National Title
Insurance Company**

Jason D. Greenblatt, Esq.
The Trump Organization
November 15, 2005
Page 2

*Jonathan A. Richards
Senior Vice President
& Regional Counsel*

*Direct Dial: 212.471.3751
Direct Fax: 212.448.0613*

E-Mail: jrichards@fnf.com

Together with all right, title and interest in and to Oregon Road abutting the above described premises on the west and south to the centerline thereof.

Schedule B of the policy will contain the following language:

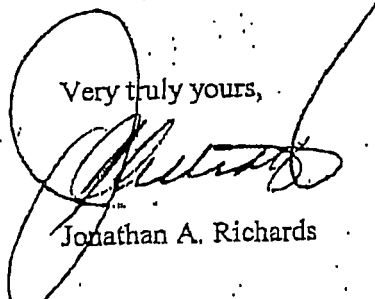
Policy will insure against loss or damage arising from the entry of a final and unappealable judgment of a court of competent jurisdiction that denies the use by the insured of the private easement and/or right way for pedestrian and vehicular access over Oregon Road southerly from the subject premises over the private portion of the said Oregon Road to the public portion of Oregon Road.

In addition, the Company agrees that in any policy to a mortgagee of the LLC or an Affiliate or purchaser (and each purchaser's mortgagee) such policy will include the following language on Schedule A:

Together with a nonexclusive right of way over the private road known as Oregon Road for pedestrian and vehicular access southerly to the public portion of the said Oregon Road.

Please do not hesitate to contact me if I can be of any further assistance to you in this matter.

Very truly yours,


Jonathan A. Richards

JAR:sh

CA\Program Files\WP FILES\Docx (C)\Docx Secure Folder (C)\Client Files\TOLLC (C)\Seven Springs\Oregon Road Litr.wpd

Y

Westlaw

48 A.D.3d 545
 48 A.D.3d 545, 855 N.Y.S.2d 547, 2008 N.Y. Slip Op. 01327
 (Cite as: 48 A.D.3d 545, 855 N.Y.S.2d 547)

Page 1

C

Supreme Court, Appellate Division, Second Department, New York.
 SEVEN SPRINGS, LLC, appellant
 v.
 NATURE CONSERVANCY, et al., respondents, et al., defendant.
 Feb. 13, 2008.

Background: Plaintiff landowner brought action seeking, inter alia, a determination that it had an easement over a portion of town highway owned in fee by defendant landowner that town sought to "close" as it was no longer used for public travel. The Supreme Court, Westchester County, La Cava, J., granted defendants' motion to dismiss. Plaintiff appealed.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) plaintiff stated cause of action based upon an implied private easement, and
- (2) town's abandonment of public highway did not serve to extinguish any private easements.

Reversed.

West Headnotes

[1] Easements 141 ↪61(8)

141 Easements

141II Extent of Right, Use, and Obstruction

141k61 Actions for Establishment and Protection of Easements

141k61(8) k. Pleading. Most Cited Cases

Plaintiff landowner stated cause of action based upon an implied private easement by alleging that original owner conveyed to plaintiff's predecessor in interest a parcel of land bounded by a road owned by defendant and used at the time as a public highway. McKinney's Highway Law § 205.

[2] Easements 141 ↪26(1)

141 Easements

141I Creation, Existence, and Termination

141k26 Termination in General

141k26(1) k. In General. Most Cited Cases

Highways 200 ↪79.7

200 Highways

200IV Abandonment

200k79.7 k. Operation and Effect. Most

Cited Cases

Town's abandonment of a public highway did not serve to extinguish any private easements held by plaintiff landowner with regard to the highway, as statute providing for such abandonment did not provide for compensation to the owners of any such easements that would be extinguished. McKinney's Highway Law § 205.

**548 DelBello Donnellan Weingarten Wise & Wiederkehr, White Plains, N.Y. (Alfred E. Donnellan, Bradley D. Wank, and Matthew S. Clifford of counsel), for appellant.

Roosevelt & Benowich, LLP, White Plains, N.Y. (Leonard Benowich of counsel), for respondent Nature Conservancy.

Stephens, Baroni, Reilly & Lewis, LLP, White Plains, N.Y. (Gerald D. Reilly and Kristen L. Holt of counsel), for respondent Town of North Castle.

Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, White Plains, N.Y. (Lois N. Rosen of counsel), for respondents Robert Burke, Teri Burke, Noel B. Donohoe, and Joann Donohoe.

ROBERT A. SPOLZINO, J.P., MARK C. DILLON, DANIEL D. ANGIOLILLO, and THOMAS A. DICKERSON, JJ.

48 A.D.3d 545
 48 A.D.3d 545, 855 N.Y.S.2d 547, 2008 N.Y. Slip Op. 01327
 (Cite as: 48 A.D.3d 545, 855 N.Y.S.2d 547)

Page 2

*545 In an action pursuant to RPAPL article 15 to compel the determination of a claim to real property, the plaintiff appeals from an order of the Supreme Court, Westchester County (La Cava, J.), entered November 3, 2006, which granted the motion of the defendants Nature Conservancy and Town of North Castle and the separate motions of the defendants Robert Burke, Teri Burke, Noel B. Donohoe, and Joann Donohoe to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211.

ORDERED that the order is reversed, on the law, with one bill of costs payable by the respondents appearing separately and filing separate briefs, and the motions to dismiss the complaint insofar as asserted against the respondents are denied.

The plaintiff and The Nature Conservancy (hereinafter the Conservancy) own abutting parcels of land that, prior to 1973, were both owned by the Eugene and Agnes E. Meyer Foundation (hereinafter the Foundation). The large parcel owned by the Foundation included the land lying under and on either side *546 of Oregon Road. Oregon Road apparently became a town highway at some point in time by virtue of its having been used by the public as a highway for a period of 10 years (*see* Highway Law § 189).

In January 1973 the Foundation conveyed the parcel now owned by the plaintiff, a portion of land lying east and north of Oregon Road, to Yale University. This parcel was subsequently conveyed to the plaintiff in 1995. In May 1973 the Foundation conveyed another portion of its land to the Conservancy. Part of the Conservancy's parcel lies on the west side of Oregon Road directly across that road from the plaintiff's parcel, and part of the Conservancy's parcel lies under and around Oregon Road south of the plaintiff's parcel.

**549 In 1990 the Town Board of the Town of North Castle caused a "Certificate of Discontinu-

ance" to be filed in the town clerk's office purporting to "close" a portion of Oregon Road as it was no longer used for public travel.

The plaintiff commenced this action in 2006, seeking, inter alia, a determination that it has an easement over the portion of Oregon Road referred to in the "Certificate of Discontinuance" and owned in fee by the Conservancy so that it can access a portion of Oregon Road south of the Conservancy parcel that was not closed to the public.

The respondents moved to dismiss the complaint insofar as asserted against them on the grounds, inter alia, that the plaintiff had no implied private easement over the relevant portion of Oregon Road, that any easement was extinguished when the relevant portion of Oregon Road ceased to be a town highway pursuant to Highway Law § 205(1), and that the plaintiff was precluded from challenging Oregon Road's status as an abandoned public highway by the one-year statute of limitations period of Highway Law § 205(2).

[1][2] Contrary to the respondents' contention, the plaintiff sufficiently stated a cause of action based upon an implied private easement arising in January 1973 when the Foundation conveyed to the plaintiff's predecessor in interest a parcel of land bounded by a road owned by the Foundation and used at the time as a public highway (*see Holloway v. Southmayd*, 139 N.Y. 390, 401-407, 34 N.E. 1047; *see also Glennon v. Mayo*, 221 A.D.2d 504, 505, 633 N.Y.S.2d 400). The abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished (*see Holloway v. Southmayd*, 139 N.Y. at 410, 34 N.E. 1047; *cf. Barber v. Woolf*, 216 N.Y. 7, 14-15, 109 N.E. 868; *Municipal Hous. Auth. for City of Yonkers v. Harlan*, 24 A.D.2d 633, 634, 262 N.Y.S.2d 161).

48 A.D.3d 545
48 A.D.3d 545, 855 N.Y.S.2d 547, 2008 N.Y. Slip Op. 01327
(Cite as: 48 A.D.3d 545, 855 N.Y.S.2d 547)

Page 3

*547 While the respondents submitted evidence that any implied private easement was voluntarily abandoned by the plaintiff or its predecessor (*see Consolidated Rail Corp. v. MASP Equip. Corp.*, 67 N.Y.2d 35, 39-40, 499 N.Y.S.2d 647, 490 N.E.2d 514), the respondents failed to conclusively establish this defense as a matter of law for the purposes of a motion to dismiss (*see Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190). Similarly, the respondents failed to conclusively establish that they interfered with the plaintiff's use and enjoyment of the easement for the requisite period of time for the easement to be extinguished by adverse possession (*see Spiegel v. Ferraro*, 73 N.Y.2d 622, 625-626, 543 N.Y.S.2d 15, 541 N.E.2d 15; *McGinley v. Postel*, 37 A.D.3d 783, 784, 830 N.Y.S.2d 588).

The respondents' remaining contentions are without merit.

N.Y.A.D. 2 Dept., 2008.
Seven Springs, LLC v. Nature Conservancy
48 A.D.3d 545, 855 N.Y.S.2d 547, 2008 N.Y. Slip Op. 01327

END OF DOCUMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

EXHIBITS TO MOTION FOR SUMMARY JUDGMENT

COHN & SPECTOR

Attorneys for Plaintiff

200 EAST POST ROAD

WHITE PLAINS, N. Y 10601-4959

Tel.: (914) 428-0505

Fax: (914) 428-0519

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____

Signature _____

Print Signer's Name _____

Service of a copy of the within

is hereby admitted.

Dated: _____

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF
ENTRY

that the within is a true copy of an
entered in the office of the clerk of the within named Court on

NOTICE OF
SETTLEMENT

on

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,

at _____
, at _____ M.

Dated: White Plains, New York
July 14, 2010

COHN & SPECTOR

200 EAST POST ROAD

WHITE PLAINS, N. Y 10601-4959

Attorney(s) for Stated Plaintiff

Seven Springs
7/1/06

FILED
JUN - 1 2011
TIMOTHY C. IDOM
COUNTY CLERK
COUNTY OF WESTCHESTER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

-----X

Index No.: 9130/2006

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

COHN & SPECTOR
200 East Post Road
White Plains, New York 10601
(914) 428-0505

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

PRELIMINARY STATEMENT

In this action Plaintiff seeks enforcement of its fee title in and an express easement over Oregon Road in every direction, including but not limited to the portion of Oregon Road that runs in a southerly direction along Plaintiff's westerly boundary to the paved, public portion of Oregon Road in the vicinity of Pole 40 adjacent to the intersection of Oregon Road and Oregon Hollow Road.

It is the Plaintiff's position that it has a fee title in and an express easement over Oregon Road. Basic points raised by the Plaintiff in support of its motion, stated directly, are as follows:

a. Plaintiff Seven Springs, LLC's ("Seven Springs's") and Defendant's The Nature Conservancy's ("TNC's") chains of title initially derive directly from the same Grantor, that being the Eugene and Agnes E. Meyer Foundation ("Meyer").

b. Seven Springs's and TNC's properties abut Oregon Road.

c. At the time of the conveyances by Meyer in 1973 to Seven Springs's predecessor in title (Yale) and to TNC (which took directly from Meyer and still is in title to its property), Oregon Road was in existence and was at that time a publicly maintained highway.

d. Yale took its property first, by a deed dated January 19, 1973 (**EXHIBIT "C"**); Meyer conveyed to TNC by a deed dated May 25, 1973 (**EXHIBIT "H"**). Prior to the conveyance to TNC, it was provided with a survey (**EXHIBIT "I"**) entitled:

"Survey showing land owned by Eugene and Agnes E. Meyer Foundation to be conveyed to The Nature Conservancy situated in the Town of North Castle, Westchester County, New York, Block 9018, Sheet 133, Sheet 146".

The survey map of the TNC property bearing the above title specifically shows the abutting property conveyed to Yale (just four months earlier). The survey map was finalized on April 3, 1973 but the actual physical survey was completed (per the legend on the map) in August 1972, prior to the conveyance to either party. The survey map, showing Yale's land to the north of the property that was conveyed to TNC, also bears the inscription:

"Eugene and Agnes E. Meyer Foundation to be conveyed to Yale University".

There can be no doubt that TNC had direct, actual notice of the location and parameters of the Yale property that had been conveyed by Meyer in January 1973 and that Yale's property to the north of its property also abutted Oregon Road and had the identical fee title in and express easement rights to Oregon Road that TNC took from Meyer four months later.

e. Each deed in Seven Springs's chain of title (**EXHIBITS "C" through "G"**) and the deed from Meyer directly to TNC (**EXHIBIT "H"**) contain the identical, mirror provision which reads as follows:

“Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . .”

In addition, it will be shown by documentary evidence (see **EXHIBITS “J”**, p. 2; **“K”**; **“L”** and **“M”**) that TNC took its property in recognition of Yale’s fee title and easement rights and interests over Oregon Road.

f. Inclusion of the specific language set forth above will be shown to constitute, as a matter of law, not only conveyance of a fee title but also an express grant of a private easement over Oregon Road.

g. In addition, it will be shown that no less than two (2) title companies have searched the record and determined that Seven Springs has a fee title and an express easement by reason of the above quoted language appearing in every deed in Seven Springs’s chain of title, through and including Seven Springs’s current deed.

By reason of the foregoing, Plaintiff’s instant application for summary judgment declaring under Article 15 of the Real Property Action and Proceedings Law that Seven Springs has a fee title and an express easement over Oregon Road in all directions, and particularly the portion in contention here, in a southerly direction toward its intersection with Oregon Hollow Road in the vicinity of Pole 40, should be granted.

FACTS

The salient facts are as set forth in the Affidavit of Donald J. Trump sworn to the 14th day of July, 2010 and the Affirmation of Julius W. Cohn dated July 14, 2010, and will not be reiterated except as necessary to the specific legal arguments advanced herein.

ARGUMENT

POINT I

SEVEN SPRINGS WAS GRANTED AN EXPRESS EASEMENT TO TRAVEL OVER OREGON ROAD IN ALL DIRECTIONS, INCLUDING SOUTHERLY TO THE PAVED AND PUBLIC PART OF OREGON ROAD IN THE TOWN OF NORTH CASTLE

- a. The Language in All of the Deeds Constitutes An Express Grant of a Private Easement over Oregon Road to the Plaintiff as a Matter of Law.

Each of the deeds in Plaintiff's chain of title, from Meyer to Yale through to the current deed (EXHIBITS "C" through "G") contain the following language:

"Together with all right, title and interest, if any, of the party of the first part, in and to any streets and roads abutting the aforesaid premises to the center lines thereof, together with the appurtenances and all of the estate and rights of the party of the first part in and to said premises . . ."

In Coleman v. Village of Head of the Harbor, et al, 163 A.D. 2d 456, 558 N.Y.S. 2d 594 (2nd Dept. 1990), *appeal denied*, 76 N.Y. 2d 712, 565 N.E. 2d 517, 563 N.Y.S. 2d 768, the Appellate Division, *sua sponte*, searched the record pursuant to CPLR §3212(b) and awarded summary judgment to co-defendant Nature Conservancy, Inc., stating the following:

"We conclude that summary judgment must be granted to NCI against the plaintiff. The language in the 1970 deed, quoted above, clearly grants to NCI all the plaintiff's "right, title and interest, if any *** in and to any streets abutting" the lands sold to NCI. This constitutes any express grant of a private easement over the subject road, independent of any public right of way. Moreover, the road is depicted on a map which a surveyor prepared on behalf of the plaintiff. The plaintiff provided NCI of a copy of that map at the time the property was conveyed . . .

We further note that the plaintiff's reference, in his affidavit in support of his motion for summary judgment, to correspondence in 1971 between himself and NCI, is of no import since parol evidence is inadmissible to explain, vary or contradict a deed which is clear and unambiguous . . . The language in the deed is a grant to NCI of an easement . . .”

The same language used in the deed involved in Coleman exists here in the Plaintiff's chain of title through and including the deed by which the Plaintiff took title. Accordingly, the grant in the deeds into the Plaintiff constitute a continuous line of unambiguous and direct grants of the easement forming the subject matter of this action.

There can be no doubt that the language set forth in each of the deeds in the Plaintiff's chain of title are sufficient to constitute an express easement over Oregon Road. No issue can be raised that the language of these deeds is either insufficient or in need of explanation via extrinsic evidence. In fact, as the Appellate Division held in Coleman, parol evidence would not be available in the instant action “to explain, vary or contradict” Plaintiff's and Plaintiff's predecessors' deeds, which are clear and unambiguous on their face. Accordingly, the Plaintiff has sustained its burden in putting forth a *prima facie* case on this summary judgment motion and is entitled to the relief requested in the motion. Summary judgment should be granted in favor of the Plaintiff.

b. **Two Title Companies Agree That the Plaintiff Has an Express Easement over Oregon Road.**

I. **The Fidelity National Title Insurance Company of New York Certification.**

Fidelity National Title Insurance Company of New York certified Seven Springs's express easement over Oregon Road with the following language (**EXHIBIT “V”**):

“Therefore, based upon our analysis of the above referenced deeds, the legal descriptions and the “together with the streets” clauses

contained therein, this Company concluded that Seven Springs LLC had fee title in and to the ½ portion of Oregon Road, as same street/roadway abuts said property on its westerly side. Also, this Company concluded that Seven Springs enjoys a non-exclusive private easement as it abuts the property it owns as well as over lands owned by the Nature Conservancy and others to the public portion of Oregon Road to the south.”

Since Fidelity National Title Insurance Company of New York is a title insurance company organized under the laws of the State of New York, its certification may be used “in place of, and with the same legal effect as, an official search.” CPLR 4523. Accordingly, that certification is (and should be regarded as) conclusive.

The Fidelity National Title Insurance Company of New York certification of title (**EXHIBIT “V”**) referred to and attached “The Donnelly Land Survey”. A copy of that survey, assembled for the convenience of the viewer from the two (2) sheets that make up the survey, is attached to the instant motion as **EXHIBIT “N”**.

ii Fidelity Title Ltd. Reached the Same Conclusion.

An independent title search was ordered by Roland A. Baroni, Jr., Esq. of the firm of Stephen, Baroni, Reilly & Lewis LLP. Mr. Baroni was the attorney representing the Town of North Castle (a former defendant in this action, see **EXHIBITS “O”, “P” and “Q”**). Mr. Baroni, acting for the Town of North Castle requested that LandAmerica Commonwealth “search the chain of title to the abandoned portion of Oregon Road, specifically for easement and access rights in favor of Seven Springs LLC over same.”¹ The President of LandAmerica Commonwealth advised counsel for North Castle as follows:

¹The issue of the abandonment or discontinuance of Oregon Road as a public highway has been addressed in an Appellate Division Decision issued in this action (see, *infra*, **EXHIBIT “Y”**), and by virtue of the Stipulation of Settlement between Plaintiff and the Town of North Castle (**EXHIBIT “P”**), this issue is no longer part of this litigation.

“Title was searched back to the early 1900's. By a series of deeds dating from July 30, 1909 through September 4, 1951, Eugene Meyer Jr. acquired an assemblage of over 300 acres of property in the Town of North Castle situated to the west of Byram Lake straddling Oregon Road south of the New Castle Town Line. Title to both the Nature Conservancy parcels and the Seven Springs, LLC parcel was traced back to the common owner, Eugene Meyer, Jr.. Although none of the deeds in the chain of title subsequent to Meyer included the abandoned portion of Oregon Road by metes and bounds, it was not excepted and the deeds all included the appurtenance clause “Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof”.

Please note the legal description contained in the deeds into Meyer did not run along the sides of the abandoned portion of Oregon Road but included Oregon Road by metes and bounds. Based upon the state of title that Eugene Meyer, Jr. was the common owner of both the abandoned portion of Oregon Road and the abutting land now owned by the Nature Conservancy and Seven Springs, LLC it is my opinion in accordance with case law, Seven Springs, LLC does have a private easement for access over the abandoned portion of Oregon Road.”

THE PLAINTIFF'S EASEMENT IS NO LESS THAN 50 FEET IN WIDTH PER THE SCALE ON THE VARIOUS SURVEYS

The Henricis' Survey made for The Meyer Foundation in late 1972 (**EXHIBIT “I”**) uses a scale of 1" equaling 100 feet. The Plaintiff's survey (“the Donnelly survey”, **EXHIBIT “N”**) uses the same scale. The Donnelly and Henricis' surveys depict Oregon Road with the exact same dimensions, that being 50 feet

in width at the narrowest point from the southwest corner of Plaintiff's property, southerly to the intersection of Oregon Road and Oregon Hollow Road in the vicinity of Pole 40, which is the widest part depicted on the surveys (see the Donnelly survey, **EXHIBIT "N"**). Oregon Road, in the vicinity of its intersection with Oregon Hollow Road measures in excess of approximately 100 feet at its widest point.

While the various maps and documents display a 50 foot width to Plaintiff's easement as discussed, *supra*, the express grant of the easement to Plaintiff does not contain any limitations on the roads abutting Plaintiff's property to which the easement applies. A grantee, such as Plaintiff, may use the right-of-way in any manner which is necessary and convenient for the purpose for which it was granted, Lake Anne Homeowners Association a/k/a Lake Anne Estates, Inc. v. Lake Anne Realty Corp., 225 A.D. 2d 736, 640 N.Y.S. 2d 200 (2nd Dept. 1996).

**PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT
DECLARING ITS OWNERSHIP TO THE ROADBED OF OREGON
ROAD, TO THE CENTER LINE THEREOF WHEREVER OREGON
ROAD ABUTS SEVEN SPRINGS'S PROPERTY**

Pursuant to Article 15 of the Real Property Actions and Proceedings Law the Plaintiff is entitled to a determination that it is the fee owner of each part of Oregon Road, to the mid-point or center line thereof wherever Oregon Road abuts Seven Springs's property and that it has an express easement over Oregon Road as the same abuts its property in all directions and over Oregon Road to the south of its property down to the portion presently used as a public road in the vicinity of the intersection of Oregon Road and Oregon Hollow Road near Pole 40. Plaintiff is also entitled to a declaration that Defendants Burke and Donohoe have no right, title or interest in any portion of Oregon Road, since the same has been specifically excluded from each of their respective deeds (**EXHIBITS "R" and "S"**), this in addition to the Plaintiff having acquired from Realis the property immediately to the east of both the Burke and Donohoe lots by a deed from Realis to the Plaintiff dated June 12, 2006 (**EXHIBIT "U"**).

a. **Plaintiff's Title to the Roadbed of Oregon Road Wherever the Same Abuts its Property, to the Center Lines of Said Road.**

The language contained in each of the deeds (starting with the grant from Meyer to Yale (**EXHIBIT "C"**)) and running right through each of the deeds and grants up to and including the Plaintiff in its deed from Rockefeller, each of those deeds being attached hereto as **EXHIBITS "C", "D", "E", "F" and "G"**, clearly grants the fee interest in the roadbed of Oregon Road to the center line of Oregon Road to each successive grantee. Accordingly, the Plaintiff seeks summary judgment here pursuant to RPAPL Article 15 determining and declaring that it is the fee owner of the roadbed of Oregon Road, to the center line thereof, as it abuts its property on all sides.

b. **Plaintiff Is Entitled to an Easement over Oregon Road.**

In the instant action, it is not disputed that Seven Springs's property is contiguous with Oregon Road, not simply along Seven Springs's westerly boundary, but also at the southwesterly corner of its property. The right-of-way southwesterly from the Seven Springs's property to the paved portion of Oregon Road (which is public) squarely comes within the express easement in The Meyer Foundation's deed to Yale University (**EXHIBIT "C"**), which identical express easement has been recited in the subsequent chain of title to Seven Springs. The fact is that Seven Springs's property touches and is contiguous with Oregon Road at its southwesterly corner, and not merely along its westerly and northerly sides. There is no requirement that a substantial portion of a parcel bound with another in order to be considered abutting. Indeed, the argument that a substantial portion of a parcel must bound with another in order to be considered abutting has been specifically rejected by the Appellate Division, Second Department in People v. Waldorf, 168 App. Div. 473, 153 N.Y.S. 1072 (2nd Dept. 1915). The court in Waldorf stated at page 478:

"It is not essential to abutting upon a street that any entire boundary of the land should be along or touch the street".

Since the requisite contiguity has been found to exist between Oregon Road to the south and Seven Springs's southwestern corner, Seven Springs is entitled to the benefit of the easement created in the deed to it and its predecessors in title back to the grant to Yale University by The Meyer Foundation (**EXHIBIT "C"**) and, therefore, there can be no true argument that no valid easement rights were granted to Seven Springs to pass and repass in all directions over the entire length of Oregon Road.

The word "abutting" has traditionally connoted the concept of contiguity. Black's Law Dictionary, Fifth Edition, page 11; Homac Corporation v. Sun Oil Co., 317 Misc. 551, 244 N.Y.S. 51 (1930). Corpus Juris Secundum defines the word "abutting" as:

"A word of common usage, having a definite, well understood meaning, as well in legal as in common parlance. It has been defined as meaning adjacent; adjoining; coming together; contiguous; ending; joined to; meeting; touching. It has been said that it conveys the idea of bordering on, bounded by, with nothing intervening."

Volume I, Corpus Juris Secundum, page 406. Furthermore, in discussing the term "abutting owners" American Jurisprudence 2d, Adjoining Landowners, Sec. 1 indicates that it "is used to designate those whose lands touch a highway or other public place".

By reason of the foregoing, the Plaintiff is entitled to both a determination that it owns the aforementioned portions of the roadbed of Oregon Road and that it has an easement in any direction over Oregon Road.

PLAINTIFF IS ENTITLED TO A PERMANENT INJUNCTION

Plaintiff has requested and is entitled to a permanent injunction:

a. Enjoining the Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiff's property.

b. Restraining the Defendants by injunction or otherwise from maintaining any obstruction, barriers, gates or the like on or across Oregon Road which obstructs or blocks the use by the Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land to have ingress and egress over Oregon Road to the Seven Springs's parcel.

c. Authorizing the Plaintiff to remove the gate and any other impediment that exists in the vicinity of "Pole 40" on Oregon Road so as to allow the Plaintiff and anyone on Plaintiff's behalf full and unfettered access to and from its property southerly over the entire length of Oregon Road. The need for a determination and direction that the aforementioned gate be removed and that the parties hereto be permanently enjoined from obstructing or interfering in any manner with Plaintiff's rights as determined herein to its easement over Oregon Road is in part set forth at paragraphs "42" through "45" of Plaintiff's Amended Complaint (**EXHIBIT "A"**).

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS REQUESTED

In Coleman, *supra*, the Second Department stated:

"It is basic summary judgment law that the movant must establish its cause of action or defense sufficiently to warrant a court's directing judgment in its favor as a matter of law (Frank Corp. v. Federal Ins. Co., 70 NY2d 966, [525 N.Y.S.2d 793, 520 N.E. 2d 512]; Alvarez v. Prospect Hosp., 68 NY 2d 320 [508 N.Y.S.2d 923, 501 N.E. 2d 572]; Friends of Animals v. Associated Fur Mfrs., 46 NY2d 1065-1068 [416 N.Y.S.2d 790, 390 N.E.2d 298]). The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (Frank Corp. v. Federal Ins. Co., *supra* [70 N.Y.2d], at 9671, 525 N.Y.S. 2d 793, 520 N.E.2d 512]; GTF Mktg. v. Colonial Aluminum Sales, 66 NY2d 65 [498 N.Y.S.2d 786, 489 N.E.2d 755]). Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue (Frank Corp. v. Federal Ins. Co., *supra*)."

Plaintiff is entitled to an order granting it summary judgment on the issues raised herein.

THE NATURE CONSERVANCY IS NOT IN GOOD FAITH

The Nature Conservancy is not in good faith in this action based upon the following:

a. In Coleman Nature Conservancy, Inc., another name by which The Nature Conservancy (the Defendant in this case) is known,² prevailed arguing the same right to a private easement over an abandoned public road as is the Plaintiff's position here. TNC failed to disclose controlling authority in this very jurisdiction, Coleman, supra, that the language in Plaintiff's chain of title through its current deed constitutes an express easement by virtue of the identical language. In addition, TNC has engaged in dilatory litigation tactics here to introduce extrinsic evidence designed to create sham issues of fact as to the "intention" of the Grantor (Meyer) before both this Court and the Appellate Division. Such material squarely contradicts the holding in Coleman, supra, which prohibits the introduction of extrinsic evidence in the face of a clear and unambiguous easement identical to the one at bar.

b. Just as in Coleman, supra, which emphasized the bad faith of a Plaintiff grantor (in TNC's favor) where the grantor gave an express easement by virtue of the language in the deed and also gave a map to the grantee depicting the road in which the easement had been given, and tried to renege on this grant, here we have the same party (TNC) denying actual notice of the easement over Oregon Road that was given to Yale in January of 1973, while TNC was intimately involved in the negotiations in and the drawing of the boundaries of the properties to be given to TNC and Yale - - all surveys showing Oregon Road abutting both the lands to be given to Yale and to TNC by the same grantor (Meyer) and TNC having been given Yales's survey map showing that road on May 22, 1973, three days before it closed with Meyer and received its own property. In the Cravath, Swaine & Moore to Wayne G. Jackson, Esq. dated May 22, 1973 (**EXHIBIT "M"**) counsel for Meyer wrote to in-house counsel for TNC, forwarding the surveys for

²www.guidestar.org

property to be conveyed to Yale, to TNC and by Meyer to The Meyer Foundation. The language of that letter (**EXHIBIT “M”**) in part reads as follows:

“I also have for you copies of the surveys of the different parcels of Seven Springs Farm passing to (1) Yale, (2) TNC and (3) The Foundation. These surveys consist of several very large sheets and I shall be glad to mail them to you in a big roll or directly to the people who will handle the application for tax exemption . . .”

As stated in the Cohn Affirmation, when TNC acquired title to its property it was fully aware of the abutting land owner (Yale University), the parameters of both properties and their respective relationships to each other, including the fact that each abutted Oregon Road which was then being used. TNC, in discovery, produced the survey of the lands The Meyer Foundation was conveying to it, **EXHIBIT “I”** bearing TNC’s bates stamp TNC-M-004. TNC never produced the survey of the Yale property, and TNC (unlike Plaintiff Seven Springs) is the direct grantee from Meyer and presumably has all of the surveys that Meyer’s counsel sent to it on May 22, 1973. Plaintiff Seven Springs is no less than the fourth grantee in the chain of title from Meyer. Seven Springs never received Meyer’s survey of the property that The Meyer Foundation originally conveyed to Yale. Clearly, TNC withheld this map which is conclusive of TNC’s having received actual notice of the easement southerly over Oregon Road enjoyed by Yale and continued to the present time.

c. There are no legitimate affirmative defenses to enforcement of Plaintiff Seven Springs’s rights. In voluminous document discovery TNC and Burke and Donohoe failed to produce a scintilla of evidence that Plaintiff or any of its predecessors abandoned their deeded fee interests in the roadbed of Oregon Road or their private easement rights. As stated in Janoff v. Disick, 66 A.D. 3d 963 (2nd Dept. 2009):

“ . . . abandonment occurs through the holder’s nonuse, combined with the holder’s intention to abandon. Moreover, the party asserting abandonment must demonstrate such intention by clear and convincing evidence (see Consolidated Rail Corp. v. MASP Equipment Corp., 67 N.Y. 2d at 39-40; 450 W. 14th St. Corp. v. 40-56 Tenth Ave., 298 A.D. 2d 113, 114.

“The acts relied upon must be unequivocal, and must clearly demonstrate the owner’s intention to permanently relinquish all rights to the easement” (citing Consolidated Rail Corp. v. MASP Equipment Corp.) . . . Here, inasmuch as the record contains no evidence that Disick intended to abandon the easement the Supreme Court properly awarded summary judgment to her dismissing the abandonment cause of action . . .”

Clearly, there has been nothing in this case which shows an overt, unequivocal intention on the part of Yale or any of the subsequent grantees (including the within Plaintiff) to abandon their private easement rights over Oregon Road.

In addition TNC has further asserted a sham affirmative defense (**EXHIBIT “B”**, TNC Answer to Amended Complaint, Twelfth Affirmative Defense: “The Complaint is bared [sic] in whole or in part, because Plaintiff does not own, and never acquired, title to any portion of the bed of Oregon Road lying to the westerly side of the Seven Springs parcel.”).

CONCLUSION

Summary Judgment for the relief requested in the Notice of Motion should be granted to Plaintiff Seven Springs herein, together with such other and further relief as this Court may seem just, property and equitable.

Dated: White Plains, New York
July 14, 2010

Yours, etc.,

COHN & SPECTOR

By: 

Julius W. Cohn

**Attorneys for Plaintiff
200 East Post Road
White Plains, New York 10601
(914) 428-0505**

**Of Counsel: Julius W. Cohn, Esq.
Wendy E. Wells, Esq.**

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LOURDES SALVADOR, being duly sworn, deposes and says:

That I am over the age of 18 and not a party to the within action; that I reside in Middletown, New York, that on July 16, 2010, I served the within **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** upon:

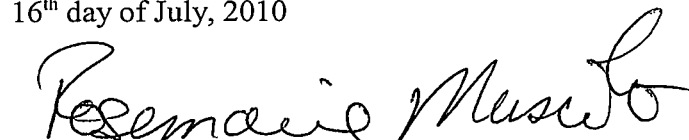
TO: Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604

Oxman, Tulis, Kirkpatrick, Whyatt & Geiger
120 Bloomingdale Road
White Plains, NY 10601

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. (Federal Express Tracking Nos.: 798858009665 & 798858054782).


LOURDES SALVADOR

Sworn to before me this
16th day of July, 2010



Rosemarie Muscolo
Notary Public, State of New York
4753358
Qualified in Westchester County
Commission Expires February 28, 2014

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

SEAN AGE
6/28/10
FILED
JUN - 1 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

**AFFIDAVIT IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE,
NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.

STATE OF NEW YORK)

NEW YORK COUNTY)

FREDERICK WERWAISS, being duly sworn, deposes and says:

I. Introduction and Summary of Position

1. I am Director of the Eastern New York Chapter of the Defendant, The Nature Conservancy ("TNC"), a charitable organization whose mission "is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the land and waters they need to survive."¹ As such, I am familiar with the facts and circumstances set forth herein and submit this affidavit in opposition to Plaintiff's Motion for Summary Judgment.

¹ <http://www.nature.org/aboutus>

2. Plaintiff's motion should be denied in all respects because (a) as a matter of fact and law, Plaintiff simply does not have the easement it claims to have over that portion of the unpaved portion of Oregon Road which is owned entirely by TNC; (b) Plaintiff has made this motion prematurely - before all discovery could be completed, and especially before Plaintiff appeared for and submitted to a deposition; and (c) Plaintiff's new counsel has dramatically and drastically changed the theory of Plaintiff's case.

3. Initially, we note that when this case was on appeal to the Appellate Division, Second Department from an order dismissing the Amended Complaint, that Court stated that:

. . . plaintiff sufficiently stated a cause of action based upon *an implied private easement arising in January 1973 when the Foundation conveyed to the plaintiff's predecessor in interest a parcel of land bounded by a road owned by the Foundation and used at the time as a public highway.*

Seven Springs, LLC v. Nature Conservancy, 48 A.D.3d 545, 546 (2nd Dep't 2008).

4. That is the cause of action that has been at the heart of this litigation since its inception - Plaintiff claimed it had an *implied* easement over that portion of Oregon Road which is owned by TNC.

5. Earlier this year, however, after this case was some four (4) years old and after this case had become "dormant" by Plaintiff's inaction, Plaintiff changed its counsel; and with that change of counsel came two more serious changes: (a) Plaintiff failed to complete (or to allow Defendants to complete) discovery in this case, and (b) Plaintiff changed the theory of its case. Plaintiff had claimed that it had an implied easement over TNC's land; now, with its new counsel, Plaintiff claims that it has an express easement.

6. Plaintiff has abandoned the original theory of its case, and has adopted a new one.

7. But Plaintiff's motion should be denied in any case because neither Plaintiff nor its predecessors had any easement over any of TNC's land. Moreover, because this is a declaratory judgment action, and because Plaintiff has failed to prove - because it cannot prove - that it has any easement over TNC's land, this Court should declare that Plaintiff does not have an easement over any land which is owned by TNC.

II. Background Facts - the Meyer Property

8. Over 100 years ago Eugene Meyer, Jr. ("Meyer"), the former publisher of the *Washington Post*, began acquiring several hundred acres of land. Meyer acquired numerous parcels of land on the East and on the West of a dirt trail known as Oregon Road. As a consequence, and as Plaintiff admits, Meyer acquired fee simple title to all of the lands lying under and on either side of Oregon Road. (Trump Aff., ¶4(d).)

9. Accordingly, Meyer owned - but did not have a private easement over any portion of - Oregon Road. *Id.*

10. Meyer died in 1959, and it appears that his interest in the land passed to his wife, Agnes E. Meyer. When Mrs. Meyer died in 1970, ownership of the Meyer property apparently passed by her Will dated July 24, 1967 (Article SIXTH) to the Eugene and Agnes E. Meyer Foundation ("Foundation"); there is no deed from Meyer to the Foundation.

11. The Foundation then divided Meyer's lands into two parcels: the first parcel, which comprised approximately 197 acres, was donated and conveyed to Yale University in

January 1973 (*see* PX-C);² and the second parcel, which comprised approximately 231 acres, was donated and conveyed to TNC in May 1973. (*See* PX-H)

A. **The Foundation's Conveyances and Purported Creation of the Easement**

1. ***The Yale-Rockefeller-Seven Springs Parcel***

12. The various parcels were conveyed as follows:

13. By deed dated January 19, 1973 (the "Yale Deed"), the Foundation conveyed certain lands described therein to Yale University. (PX-C) These lands lie generally on the east side of Oregon Road, and to the North of the TNC Parcel (the "Yale Parcel").

14. The Yale Deed does not refer to any maps. (PX-C) Rather, the Yale Parcel is described in the Yale Deed by a 7-page description using metes and bounds, courses, and references to various landmarks and other markers. The Yale Deed also does not contain any express easement; there is no language granting an easement over any particular piece of property that was retained or owned by the Foundation.

15. The Foundation, however, did commission a surveyor to prepare a survey of the lands it intended to convey to Yale.³ That survey shows that the Foundation conveyed approximately 197 acres to Yale.

16. As Plaintiff points out (*see* Trump Aff., ¶5), the Yale Deed does contain the following phrase:

² For the Court's convenience, Plaintiff's Exhibits are referred to as "PX-_", and TNC's Exhibits will be referred to as "TNC-X-_".

³ A copy of that survey is annexed as **Exhibit 1**. Although Plaintiff suggests that it does not have or has never seen this survey (*see* Pltf's Mem., at 13), the Court should be aware that TNC produced a copy of this survey in discovery, "TNC-M-005."

TOGETHER with all right, title and interest, *if any*, of the Grantor in and to any streets and roads abutting the Premises to the centerlines thereof. [Emphasis added.]

(See PX-C, at 1; emphasis added).⁴

17. Almost immediately after it acquired the Yale Parcel, Yale, on March 23, 1973, conveyed the Yale Parcel to a not-for profit corporation formed by Yale, called Seven Springs Farm Center, Inc. (“Farm Center”) (PX-D)⁵ This deed contains a similar “together with” clause, but also does not expressly indicate that the grantee enjoys any easement over the TNC Parcel. (Yale, of course, could not create an easement over any portion of the TNC Parcel, because Yale did not own the TNC Parcel.)

18. By deed dated April 12, 1984, Farm Center conveyed its property to Rockefeller University (“Rockefeller”) by a quitclaim deed. (PX-F) This deed contains a similar “together with” clause, but also does not expressly indicate that the grantee enjoys any easement over the TNC Parcel.

19. By deed dated December 22, 1995, Rockefeller conveyed to Plaintiff the land specifically described therein. (PX-G) This deed contains a similar “together with” clause, but

⁴ Plaintiff has admitted that Meyer (and thus the Foundation) owned the fee, and not an easement in Oregon Road. (Trump Aff., ¶4(d)); Meyer “acquired fee title to the entire bed of Oregon Road. . . .” (PX-V, at 2); “Meyer was the common owner of both the abandoned portion of Oregon Road and the abutting land now owned by [TNC] and [Plaintiff]. . . .” (PX-W, at 2).

For reasons we explain in more detail in TNC’s accompanying memorandum of law, this language does not create or convey any easement - precisely because neither Meyer nor the Foundation had any “easement” in Oregon Road.

⁵ The New York Secretary of State’s records show that Farm Center was a not-for-profit corporation, and was dissolved in August 1984, shortly it conveyed the Seven Springs Parcel to Rockefeller. See printouts annexed hereto as **Exhibit 2**.

also does not expressly indicate that the grantee enjoys any easement over the TNC Parcel.

20. Each of the foregoing deeds contained the “together with” phrase which first appeared in the Yale Deed. (*See* PX-C, D, F, G) However, for the reasons set forth above, no easement was created or conveyed, because each party had acquired the Foundation’s interest which was the fee, and not an easement.

21. Plaintiff refers to the lands it owns as the Seven Springs Parcel, and we will adopt that term for purposes of this motion.

2. The TNC Parcel

22. As already noted, by deed dated May 25, 1973 (the “TNC Deed”), the Foundation conveyed the TNC Parcel to TNC. (PX-H)

23. There is no language in the TNC Deed which indicates that the TNC Parcel is in any way burdened or subject to an easement in favor of any party. *Id.*

24. The Foundation also appears to have caused a surveyor to survey the TNC Parcel which it intended to convey to TNC. (PX-I)

25. The TNC Parcel is configured (insofar as it relates to the Seven Springs Parcel) as a sort of “L-shaped” parcel: much of the TNC Parcel lies generally to the west and south of the Seven Springs Parcel. Significantly, where the TNC Parcel lies to the south of the Seven Springs Parcel, the “foot” of the TNC Parcel extends from the west side of Oregon Road and over to the east of Oregon Road. (*Compare* PX-I, and TNC-X-1)

26. A review of these two surveys shows that to some extent the TNC Parcel and the Yale Parcel each abut their respective side of Oregon Road. However, these surveys also show

that the Yale Parcel ends at a point,⁶ which point is on the eastern side of Oregon Road, while the TNC Parcel extends over Oregon Road, to the south of the Yale Parcel, from the west to the east.

27. Plaintiff admits that TNC is the fee owner of the land underlying, and the roadbed of, Oregon Road at the point where the TNC Parcel lies south of the Seven Springs Parcel. (Trump Aff., ¶4(d))⁷

28. At the time the Foundation executed the TNC Deed, the Foundation also insisted that TNC, as a condition of receiving the TNC Parcel, had to agree that it would always maintain and use the TNC Parcel as a nature preserve and nature sanctuary. By agreement dated May 25, 1973 (the "Reverter Agreement"), the Foundation gave TNC a \$200,000 endowment to be used by TNC in preserving and maintaining the TNC Parcel in its natural state, as a nature preserve and sanctuary.⁸ In that same Reverter Agreement, TNC agreed, *inter alia*, as follows:

In consideration of the transfer by [the Foundation] to TNC of two parcels of real property (collectively called the Meyer Sanctuary), one parcel consisting of approximately 122.4 acres, and the other of approximately 108.6 acres . . . and more particularly described in a deed from the Foundation to TNC (the Deed), dated the same date as this Agreement and intended to be recorded promptly in Westchester County Clerk's office, TNC hereby agrees as follows:

* * *

⁶ Noted in the Yale Parcel survey (TNC-X-1) as: N84° 18' 40"; and on the TNC Parcel survey (PX-I) as: S84° 18' 40".

⁷ The Town made the same concession at proceedings held herein on December 9, 2008: "the Town does not own any part of the road that's closed. That is owned by The Nature Conservancy." (Statement of Roland Baroni, Esq.; P.8/L.16-18) (Excerpts from this transcript are annexed as **Exhibit 3**.)

⁸ A copy of this Reverter Agreement is annexed as **Exhibit 4**.

2. *In the event that TNC shall at any time fail to continue to maintain all or any part of the Meyer Sanctuary as a nature preserve or in a way which will conserve its essential natural character, TNC will promptly execute and deliver a Reconveyance or all or such part of the Meyer Sanctuary to the Foundation, or to such other grantee as the Foundation shall direct in writing, and TNC shall repay to the Foundation or such other grantee the then balance of the Endowment or, if TNC shall continue to maintain any part of the Meyer Sanctuary, such proportionate share of the Endowment as shall then be agreed upon by TNC and the Foundation.*

3. *This agreement shall bind TNC, its successors and assigns, benefit the Foundation, its successors and assigns, and be deemed to run with the land of the Meyer Sanctuary. [Emphasis added.]*

29. Even the documents annexed to Plaintiff's motion demonstrate that while TNC was aware of the Foundation's conveyance to Yale, Yale was also aware of the Foundation's conveyance of the TNC Parcel to TNC. (See PX-J, K, L, M) Contemporaneous documents also show that the Foundation intended, and Yale understood, that (a) the Yale Parcel was to be used as a study center, and (b) the TNC Parcel was to be used and maintained solely as a nature preserve, and that TNC would be subject to the Reverter Agreement. (See also memorandum dated January 8, 1973, annexed hereto as **Exhibit 5**.)

B. Oregon Road

30. Oregon Road is a dirt road, a hiking trail. As Plaintiff's engineer's stated in 1998,

“[t]his area is currently a walking trail and has been blocked to vehicular use.”⁹ And, as Plaintiff’s prior counsel, Alfred Donellan, Esq., represented during proceedings in this case on March 18, 2008, Oregon Road is “a dirt road” (TNC-X-3, P.23/L3-4); “it’s like stone and dirt.” (*Id.*, P.29, L19-20).

31. Since TNC acquired the TNC Parcel, it has used and maintained that portion of Oregon Road owned by TNC as a hiking trail, as part of the Meyer Nature Preserve. *Id.*

32. In 1990 - long before Plaintiff acquired the Seven Springs Parcel, portions of Oregon Road were closed by the Town of North Castle (“Town”). (*See* Plt’s Amd. Cplt., ¶42, PX-A) TNC, among others, had asked the Town to close a portion of Oregon Road because it was being used as a dump.¹⁰

33. Although Plaintiff contends that Oregon Road was a public road or highway, Plaintiff has offered no evidence that Oregon Road was a public road at any particular time, and certainly not as of January 1973, when the Yale Deed was executed.

34. And there is no such evidence. The Town’s interrogatory responses served in this case, before Plaintiff’s claims against the Town were discontinued,¹¹ establish that even the Town does not know when (and, thus it cannot know if) Oregon Rad was first used as a public road, and it produced no evidence that, as of 1973, the Town itself had ever exercised dominion or control over Oregon Road, as required by New York law.

⁹ Plaintiff’s 1998 Draft Environmental Impact Statement (“1998 DEIS”), at v-94. Excerpts from this 1998 DEIS are annexed as **Exhibit 6**.

¹⁰ Copies of letters dated February 28, 1989 and March 21, 1989 from TNC to the Town are annexed as **Exhibit 7**.

¹¹ The Town’s interrogatory responses dated April 6, 2009 are annexed as **Exhibit 8**.

1. Rockefeller Abandoned Any Easement or Right of Way to the South over Oregon Road

35. In May 1990, the Town acted to close that portion of Oregon Road located within its jurisdiction and also to install a locked gate at the southernmost point of the unpaved portion of Oregon Road, just before it meets the paved, public portion of Oregon Road. The Town's Certificate was filed in the Town Clerk's office on May 10, 1990 (as required by law), as were the minutes of the Town Board's vote acknowledging the abandonment and approving the discontinuance and closing of Oregon Road. (A copy of this Certificate is annexed as **Exhibit 9**)

36. Rockefeller, Plaintiff's immediate predecessor-in-interest, owned the Seven Springs Parcel at that time.

37. During that process, the Town certified, *inter alia*, that "the area, being remote, is used illegally to dump litter, fill and other undesirable material in violation of local and state laws," and also that "the affected property owner, The Rockefeller University, has consented to the closing and has adequate ingress and egress to its property by alternative means." (*Id.*)

38. The gate was intended to and did make Oregon Road impassable to vehicular traffic.¹² As part of the Town's closing of Oregon Road, and at TNC's request (*see* TNC-X-2), the Town installed a locked steel barrier gate across the southern portion of Oregon Road, at a location known as Pole 40 (the "Gate") (*see* PX-N), where the paved, improved and legal portion of Oregon Road ends and where the unpaved path on the TNC Parcel begins.¹³

¹² Plaintiff so alleged in paragraph 41 of its original complaint in this case, a copy of which is annexed as **Exhibit 10**.

¹³ Plaintiff's own survey shows that the "metal posts" at either end of the Gate are on the far or outside of any purported easement area. (PX-N)

39. Rockefeller, thus, affirmatively abandoned any easement or other right of way it may have had over that portion of Oregon Road which was (and still is) owned by TNC.

40. There is no evidence that Rockefeller ever traveled over the southern portion of Oregon Road which is owned by TNC after the Gate was installed.

41. The Town has stated in its discovery responses that the Gate was locked; that the Town alone had the key; and that neither Rockefeller nor Plaintiff ever asked for the key to the Gate. (*See* TNC-X-8)

C. Plaintiff's Access to the Seven Springs Parcel

42. Plaintiff admittedly has access to and from the Seven Springs Parcel. That access is over the northerly portion of Oregon Road, which leads to Byram Lake Road. Plaintiff has unfettered access to and over the northerly portion of Oregon Road, allowing it access to and from the Seven Springs Parcel. (PX-A, Amd. Cplt., ¶14)

43. As Plaintiff's prior counsel stated during the March 18, 2008 proceedings in this case, the Seven Springs Parcel "has been accessed from the north by my client for some period of time." (Excerpts from this transcript are annexed as **Exhibit 11**, P20/L8-10)

D. The Location of Plaintiff's Claimed Easement is Definitely Located on Oregon Road

44. Plaintiff claims in this case that it has an easement over the southern portion of Oregon Road which it concedes is owned by TNC.

45. In December 1995, more than five (5) years after the Town closed Oregon Road and installed the Gate, Rockefeller conveyed the Seven Springs Parcel to Plaintiff. PX-G.

46. There is no evidence that, for the more than 10 years after it acquired title to the Seven Springs Parcel, Plaintiff ever sought to use or pass over the portion of Oregon Road which

is owned by TNC.

47. Plaintiff does not contend that it ever attempted to use or travel over that portion of Oregon Road owned by TNC, or even that it ever made a demand on the Town to open or unlock the Gate until this action was commenced in May 2006.

E. Plaintiff's Prior Public Statements: Plaintiff Admits it has no Easement over the TNC Parcel

48. After it acquired the Seven Springs Parcel in December 1995, Plaintiff or its representatives made numerous statements to various public boards and authorities in which it affirmatively recognized that Plaintiff has no easement over the TNC Parcel.

49. In its 1998 DEIS, Plaintiff's engineers acknowledged that TNC "fully owns the entire road bed [of Oregon Road] south of [the] Seven Springs [Parcel]" and that "the owners of the Seven Springs site have no rights to utilize any part of the portion of the roadway" south of the [Seven Springs] site. (*See* TNC-X-6, at v-94)

50. In its June 1998 revision to that DEIS, Plaintiff's engineers reiterated this position in almost the same language. (Excerpts from the June 1998 revised DEIS are annexed hereto as **Exhibit 12.**)

51. At a public hearing held on December 14, 2000 on Plaintiff's Final Environmental Impact Statement ("FEIS"), Plaintiff's representative again stated, at page 20 of the transcript of those proceedings, that "[w]e don't own the road [Oregon Road, we own a piece of it. It is owned by the Nature Conservancy." (Excerpts from the transcript of this public hearing are annexed as **Exhibit 13.**)

52. In its responses to comments made at the FEIS hearing, Plaintiff's representative again stated that Plaintiff had no rights to use that portion of Oregon Road which is owned by

TNC and located within the TNC Parcel:

As stated in the DEIS (page V-122) “. . .this road connection, in the absence of condemnation, would require approval from [TNC], which fully owns the entire road bed south of Seven Springs and the western half of the road adjacent to the property . . . the owners of the Seven Springs site have no rights to utilize any part of the portion of the roadway located south of the [Seven Springs] site. Both [TNC] and the [Town] have indicated their disinclination to approve the opening of this route.” See also FEIS response to comments B119, B120, B121 where this issue is addressed.

(A copy of this statement is annexed as **Exhibit 14**)

F. Plaintiff’s Intended Use of the Purported Easement is Improper and Inherently Inconsistent with the Nature of the Claimed Easement

53. Plaintiff does not inform the Court of the manner in which it intends to use any easement it claims to have over the TNC Parcel. But Plaintiff did state the nature of its intentions in its Main Brief submitted to the Appellate Division. In that Brief (excerpts from which are annexed hereto as **Exhibit 15**), Plaintiff’s stated intended use of the easement it seeks from this Court is inherently inconsistent with the nature of the easement it claims to have:

The plaintiff intends to improve the existing dirt road over the Easement Area with a road that is approximately 20 feet in width, which is commensurate with the paved section of Oregon Road. The road will blend in with the terrain, and *it is intended for, and will be strictly limited to, use by emergency vehicles only. In addition, the road will have at its southerly terminus a gate that can only be opened and closed by an infra-red line of sight transmitter that is restricted to emergency vehicles.*

(*Id.*, at 8, emphasis added).

54. Plaintiff claims that it has a private, non-exclusive easement over that portion of Oregon Road which is owned by TNC and which is located within the TNC Parcel. As Plaintiff stated, also in its Brief in the Appellate Division, “Seven Springs has a *non-exclusive private* easement as [Oregon Road] abuts its property as well as over The Nature Conservancy Property and others to the public portion of Oregon Road to the south.” (*Id.*, at 11, 29; PX-V, at 3) (emphasis added)

55. But Plaintiff’s intended use of any such easement - installing a locked gate to restrict access to emergency vehicles servicing only Plaintiff’s land and denying access to TNC and to anyone else with a similar easement - would be inconsistent with any non-exclusive, private easement, and it would dramatically alter the use that TNC is to make of the TNC Parcel by the Reverter Agreement.

56. There is no doubt that Plaintiff wants to change its claimed “non-exclusive, private easement” over Oregon Road into a private, exclusive easement. When Plaintiff settled and discontinued its claims against the Town, the Town agreed that it “will support the use of Oregon Road as a *gated private* road. . . .” (PX-P, ¶III(B) (emphasis added)).

57. The Foundation required TNC to maintain the TNC Parcel in its natural state. TNC-X-4. By construing the Yale Deed to grant an easement such as that sought by Plaintiff in this case would plainly frustrate the Foundation’s expressed intention, and it would prevent TNC from complying with its obligations under the Reverter Agreement.

III. Prior Proceedings in this Court

58. Plaintiff commenced this action in May 2006.

59. TNC and the other defendants all moved to dismiss the Complaint. Justice

LaCava granted those motions and dismissed this case.

60. On appeal, the Appellate Division reversed and reinstated the complaint. *Seven Springs, LLC v. Nature Conservancy*, 48 A.D.3d 545, 546 (2nd Dep't 2008) (PX-Y).

61. Shortly after the Appellate Division's decision, Plaintiff began to clear Oregon Road and otherwise make changes to that portion of Oregon Road which is owned by TNC.

62. TNC moved for a preliminary injunction restraining Plaintiff from making any use of the TNC Parcel other than as a hiking trail.

63. TNC, then, asserted a counterclaim against Plaintiff for trespass and for a permanent injunction enjoining Plaintiff from trespassing on the TNC Parcel. (*See* PX-B; a copy of TNC's pleading dated April 23, 2008 is also annexed hereto as **Exhibit 16**.)

64. This Court (Hon. Rory Bellantoni) granted TNC's motion and issued a preliminary injunction conditioned on TNC's posting of a bond in the amount of \$100,000, which TNC has posted. A copy of the preliminary injunction order is annexed as **Exhibit 17**.

A. The December 2008 Conference/Hearing

65. At proceedings held on December 9, 2008, the parties acknowledged that they needed discovery and desired to set a schedule. (*See* TNC-X-3, at 16-17) The Court set a discovery schedule. (*Id.*, at 29-32) Plaintiff's counsel stated at that hearing that it wanted depositions, it wanted "someone with knowledge from each of the parties." (*Id.*, P.32/L.8-10) The Court also directed that all depositions be concluded by May 1, 2009. (*Id.*, at 33) TNC's counsel pointed out that it had served a notice to take Plaintiff's deposition by Mr. Trump, and Plaintiff's counsel stated that there would be no problem in Plaintiff producing Mr. Trump as Plaintiff's witness. (*Id.*, P.36/L.15-17)

66. At a conference/hearing held on March 31, 2009, Plaintiff and the Town asked the Court to approve their agreement and to allow Plaintiff to discontinue its claims as against the Town. TNC objected, for numerous reasons. The Court ultimately directed Plaintiff and/or the Town to move for permission to discontinue the action as against the Town, and set a briefing schedule for the submission of that motion. Because that briefing schedule necessarily delayed and prevented the parties from complying with the discovery schedule the Court had set in December 2008, TNC raised with the Court that the time for briefing and decision on that motion would mean the parties could not comply with the discovery schedule. The Court stated “nobody’s rights will be prejudiced, as far as the discovery goes, considering-” and “I’ll extend all of those” deadlines. (Transcript of proceedings held March 31, 2009, P.50/L.12-14, 16-17, excerpts from which are annexed as **Exhibit 18**).

67. The Order granting the Town’s motion (*see* PX-Q) was signed on August 11, 2009, but that Order did not direct the parties to appear for a preliminary or other conference, and it did not re-set any discovery schedule or deadlines.

B. Plaintiff Commences *Seven Springs II*

68. Once the Court granted leave to discontinue Plaintiff’s claims against the Town, Plaintiff essentially stopped prosecuting this action. Rather, in September 2009, Plaintiff commenced another action, *Seven Springs LLC v. The Nature Conservancy, et al.*, Index no. 21162/09 (“*Seven Springs II*”), in which Plaintiff claimed that TNC and the other defendants therein - the same defendants in this case - were acting maliciously by defending this action! (A

copy of the complaint and first amended complaint in that action are annexed as **Exhibit 19**)¹⁴

69. Plaintiff substituted its counsel in this case on or about April 30, 2010.

70. TNC's counsel had no communication with Plaintiff's new counsel in connection with this case until Plaintiff filed the instant motion for summary judgment.

IV. TNC and the Other Defendants Have Not Had an Opportunity to Conduct - much less Conclude - Discovery in this case

71. Plaintiff's motion for summary judgment is premature, and TNC and the other defendants have been denied an opportunity to conduct depositions of Plaintiff and the Town, and to obtain discovery from other non-parties, including Rockefeller (Plaintiff's grantor) and the authors of the title company letters relied on by Plaintiff.

72. TNC and the other Defendants contend that there is no express easement conveyed in the Yale Deed or any of the subsequent deeds in Plaintiff's chain of title. The Appellate Division has held that the cause of action stated in this case is one for an implied easement. In either case, under settled law, this Court must determine the grantor's intent. Also, because TNC and the other Defendants have asserted affirmative defenses such as abandonment and adverse possession, we necessarily must have an opportunity to conduct discovery on facts relating to these defenses.

73. Even after it made this motion, and in violation of the automatic stay of discovery under CPLR 3214, Plaintiff purportedly served *subpoenae* on two non-party, title-company witnesses. Copies of these *subpoenae* are annexed as **Exhibit 20**. Although Defendants asked

¹⁴ Justice Nicolai denied the defendants' motions to dismiss *Seven Springs II*. TNC and the other defendants have moved for reargument. Plaintiff has cross-moved for leave to amend and to serve a proposed third pleading.

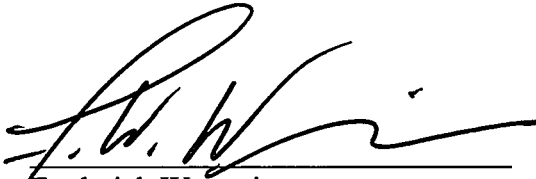
Plaintiff to adjourn this motion and allow Defendants the same opportunity to conduct discovery (of Plaintiff and of the various title companies relied upon by Plaintiff), Plaintiff refused - stating that the non-party *subpoenae* were served only so that the title companies' information could be presented to this Court during oral argument of this motion, and that the Plaintiff's deposition was unnecessary.

74. Of course, Plaintiff's argument is facile: if the *subpoenaed* materials are not part of the record of this motion, they could not be considered by the Court on argument of this motion.

75. I am advised by counsel that Plaintiff's motion for summary judgment under CPLR 3212 necessarily stays discovery under CPLR 3214. Plaintiff's counsel has rejected requests that Plaintiff hold this motion in abeyance, or otherwise adjourn the motion to allow defendants to conduct depositions of Plaintiff (by Mr. Trump) and of the authors of the several title company letters relating to its claimed easement over TNC's land. Mr. Trump is the principal of Plaintiff, he has signed several affidavits in this case, and he is the only representative of Plaintiff to have signed any affidavits in this case.

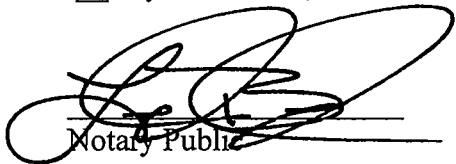
V. Conclusion

76. Plaintiff has failed to establish that it has any easement over any portion of the TNC Parcel. Accordingly, this Court should deny Plaintiff's motion and, because this is an action for a declaratory judgment, this Court should declare that Plaintiff has no easement over any portion of the lands owned by TNC and which are located within the TNC Parcel.



Frederick Werwaiss

Sworn to before me this
5th day of October, 2010



Notary Public

LEONARD BENOWICH
Notary Public, State of New York
No. 02BE5035394
Qualified in Westchester County
Commission Expires October 31, 2010

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

AFFIDAVIT OF PAULA KLEIN

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE,
NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.

-----x

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

PAULA KLEIN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the Courts of the State of New York. I am Senior Counsel of Stewart Title Insurance Company. Unless otherwise indicated, I have personal knowledge of the facts and circumstances set forth herein.

2. Stewart Title has performed a search of the chain of title of the Nature Conservancy (“TNC”) in and to the lands TNC acquired from the Eugene and Agnes Meyer Foundation (“Foundation”) under and by virtue of that certain deed dated May 25, 1973, and recorded in Liber 7127, Page 719. Stewart also conducted a search of the title held by the Foundation (or its predecessor in interest, Eugene Meyer [“Meyer”]), as well as of the property conveyed by the Foundation to Yale University by deed dated January 19, 1973, and recorded in Liber 7115, Page 577, and also of the right, title or interest, if

any, of the plaintiff, Seven Springs, LLC in, to or over that portion of so-called Oregon Road which is owned, in fee simple, by TNC.

3. Specifically, Stewart has also examined each of the deeds annexed to the Plaintiff's motion for summary judgment as Exhibits C, D, E, F, G, H, R, S and U; and we have examined each of the maps or surveys annexed to Plaintiff's motion as Exhibits I, N and T. We have also examined the survey "showing land owned by Eugene and Agnes E. Meyer Foundation to be conveyed to Yale University," annexed to TNC's papers in opposition to Plaintiff's motion.

4. Stewart has also reviewed the following letters which are also attached to Plaintiff's motion for summary judgment: letter dated August 15, 2006 from Fidelity National Title Insurance Company of New York to Bradley Wank, Esq. (Exhibit V); letter dated February 16, 2006 from Fidelity Title, Ltd. to Stephens Baroni Reilly & Lewis, LLP (Exhibit W); and letter dated November 15, 2005 from Fidelity National Title Insurance Company to Jason Greenblatt, Esq. (Exhibit X). I previously saw Exhibits W and X; I had not previously seen the first (Exhibit V), which is dated several months after Stewart performed its title work.

5. After this action was commenced, we searched and examined the foregoing title. By letter dated April 27, 2006, we stated that: "we are unable to conclude that Seven Springs, LLC enjoys a private easement over that portion of Oregon Road which lies within TNC's lands. Under all of the circumstances, the fact that Seven Springs might enjoy a private easement over that portion of Oregon Road where its land abuts Oregon Road is insufficient to conclude that Seven Sp[rings] enjoys a private

easement over that portion of Oregon Road that lies within TNC's land." A copy of this letter is annexed as Exhibit 21 to TNC's papers in opposition to Plaintiff's motion.

6. Several things in these various deeds compel our conclusion that Seven Springs has no easement over that portion of Oregon Road which is owned by TNC.

7. First, the Yale Deed (Plaintiff's Exhibit C), does not contain any language conveying any express easement to the grantee. The Yale Deed describes by metes, bounds and courses, the lands being conveyed thereby. The Yale Deed also contains the following phrase: "TOGETHER with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the Premises to the centerlines thereof; . . ." (Exhibit C, at page 9; emphasis added.) This phrase does not constitute an express grant of an easement. This phrase provides only that whatever interest the grantor had "in and to any streets and roads abutting the Premises to the centerlines thereof" is being conveyed to the grantee. Because Meyer had acquired the fee interest in and to the land surrounding and underneath the so-called Oregon Road, any and all easements in or to the so-called Oregon Road were extinguished by merger, and Meyer (and the Foundation), thus, had a fee interest, but not an easement, "in and to any streets and roads abutting" the lands conveyed to Yale. The Foundation's conveyance of any fee interest to the centerline of that portion of Oregon Road which abutted the property specifically described on the seven-page Exhibit A to the Yale Deed does not create or grant an easement in favor of Plaintiff over any other portion of Oregon Road. Had the Foundation intended to create or grant an easement in favor of Yale over the lands that were retained by the Foundation, the Yale Deed would or should have contained express language stating that the grantee had such an easement. But there is no such language in the Yale Deed.

8. Second, the mere fact that the property conveyed to Yale abutted the so-called Oregon Road does not mean – and Stewart would not insure – that the grantee obtained an easement (whether express or implied) over any portion of the so-called Oregon Road which Seven Springs’s property does not abut. There is nothing in the language of the Yale Deed that even suggests that the Foundation intended to or did convey such an easement to Yale, and there is nothing in either of the letters (identified in paragraph 4, above) which explains why the authors of such letters believe that Yale had, or Seven Springs has, any such easement.

9. Third, we have also reviewed that certain agreement dated May 25, 1973 between the Foundation and TNC (the “Reverter Agreement”). Under this Reverter Agreement, it is clear that the Foundation intended that TNC use the lands conveyed to it by the Foundation “as a nature preserve” and to “preserve” the “essential natural character” of such lands. This is a clear indication of the grantor’s intention that the lands conveyed to TNC, which include the fee to a portion of the so-called Oregon Road, be used solely as a nature preserve or sanctuary and not for any other purpose, on pain of TNC having to reconvey that property back to the Foundation. This Reverter Agreement expressly states that it is “deemed to run with the land of the Meyer Sanctuary.”

10. Fourth, given the absence of any language creating any easement in the Yale Deed, and given the language of the Reverter Agreement, we could not conclude that the Foundation had any intention to, or did, dedicate the so-called Oregon Road to public use.

11. Fifth, we have reviewed evidence which, while not in the chain of title, does establish that Plaintiff’s predecessor in interest, Rockefeller University, did abandon

any easement it might have had over that portion of Oregon Road owned by TNC. We understand that the Towns of New Castle and North Castle both acted to close Oregon Road. We understand that when the Town of North Castle discontinued and closed Oregon Road in 1990, it certified that (a) Rockefeller had access to its property by means other than over the portion of Oregon Road owned by TNC, and (b) abandoned any such easement interest. We also understand that once the Town installed a locked Gate at the southern terminus of the unpaved portion of Oregon Road, it retained the key and neither Rockefeller nor Plaintiff ever asked for nor obtained the key, and neither Rockefeller nor Plaintiff had vehicular access to, on or over that portion of Oregon Road owned by TNC.

12. Sixth, we have also reviewed that portion of Plaintiff's Brief submitted to the Appellate Division, Second Department in this case, in which Plaintiff states the nature of the use it intends to make of the easement it seeks in this case:

The plaintiff intends to improve the existing dirt road over the Easement Area with a road that is approximately 20 feet in width, which is commensurate with the paved section of Oregon Road. The road will blend in with the terrain, and it is intended for, and will be strictly limited to, use by emergency vehicles only. In addition, the road will have at its southerly terminus a gate that can only be opened and closed by an infra-red line of sight transmitter that is restricted to emergency vehicles.

13. In our opinion, this use of the so-called Oregon Road would not be permitted by any easement of the sort that Plaintiff has claimed. We understand that Plaintiff claims to have obtained a private, non-exclusive easement over the portion of Oregon Road owned by TNC. We also understand that the authors of the various letters referred to in paragraph 4, above, also characterize the nature of the easement sought by Plaintiff as one that is "non-exclusive". Even assuming Plaintiff had any such "non-exclusive" easement," in our opinion this proposed use would (a) exclude TNC from

using its own property in the same way that Plaintiff seeks to use the property and (b) be impermissible.

14. Based upon all of the foregoing, we certify that Seven Springs does not have an easement over that portion of the so-called Oregon Road which is owned in fee and entirely by TNC.


Paula Klein

Sworn to before me this
~~26th~~ day of August 2010


Notary Public

HENRY SILLCOCKS
Notary Public, State Of New York
No. 4787738
Qualified In Westchester County
Commission Expires December 31, 20 13

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

**AFFIDAVIT OF
DENNIS M. LOWES**

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE,
NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.

-----x

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

DENNIS M. LOWES, being duly sworn, deposes and says:

1. I am employed by the Ralph L. MacDonald & Co., Engineers & Land Surveyors, PC. I am the manager in charge of our office which had been located in Armonk, New York and is now located in Greenwich, Connecticut. I am a licensed surveyor. (NY License No.: 49094) Unless otherwise indicated, I have personal knowledge of the facts and circumstances set forth herein and I submit this affidavit in opposition to Plaintiff's motion for summary judgment.

2. On October 26, 2010, I conducted measurements between the faces of the stone walls bordering the traveled way which is referred to as Oregon Road on the composite surveys prepared by Donnelly Land Surveying, PC, dated August 2005, which

are attached as Exhibit N to the affidavit of Plaintiff's counsel, Julius Cohn, dated July 14, 2010 (the "Donnelly Survey").

3. I have also reviewed Plaintiff's Memorandum of Law in Support of its motion for summary judgment in this case, and specifically the statements on pages 7-8 in which Plaintiff's counsel states or suggests that Oregon Road, as depicted on the Donnelly Survey, is at least 50-feet wide.

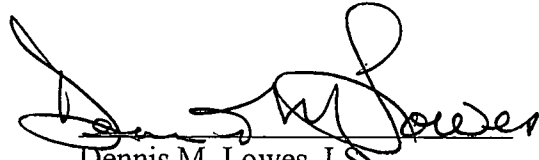
4. Measuring between the faces of the bordering stone walls along Oregon Road, I found that, contrary to the suggestion in Plaintiff's Memorandum, Oregon Road is not consistently at least 50-feet wide.

5. As shown on the Donnelly Survey, the southern-most portion of Plaintiff's lands which abut Oregon Road ends at the point which is identified as: N 20°28'30" E.9.06' on the Donnelly Survey (the "Point"). From that Point to the south, which is marked in yellow on Exhibit N, the lands on either side of Oregon Road, and the bed of Oregon Road are owned by The Nature Conservancy.

6. *First*, the Donnelly Survey itself does not indicate that Oregon Road is at least 50-feet wide in all locations. Using a surveyor's ruler, I determined that in a substantial portion of this area on the Donnelly Survey, Oregon Road is less than 50-feet wide.

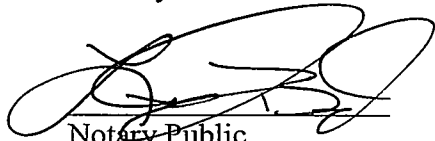
7. *Second*, my actual field measurements of Oregon Road reveal that Oregon Road is far narrower than 50-feet wide in many locations. I measured the portion of Oregon Road from the Point to the south and found that for the first 490 feet, Oregon Road was less than 50-feet in width and was approximately 30-feet wide at the Point. From the Point to a location past Pole 34 and just before Pole 35, no portion of Oregon

Road is 50-feet wide between the faces of the stone walls. (Oregon Road is approximately 1100 feet long, from the Point to the gate that was installed by the Town of North Castle near Pole 40.)



Dennis M. Lowes, LS
NY State License No. 49094

Sworn to before me this
26th day of October 2010

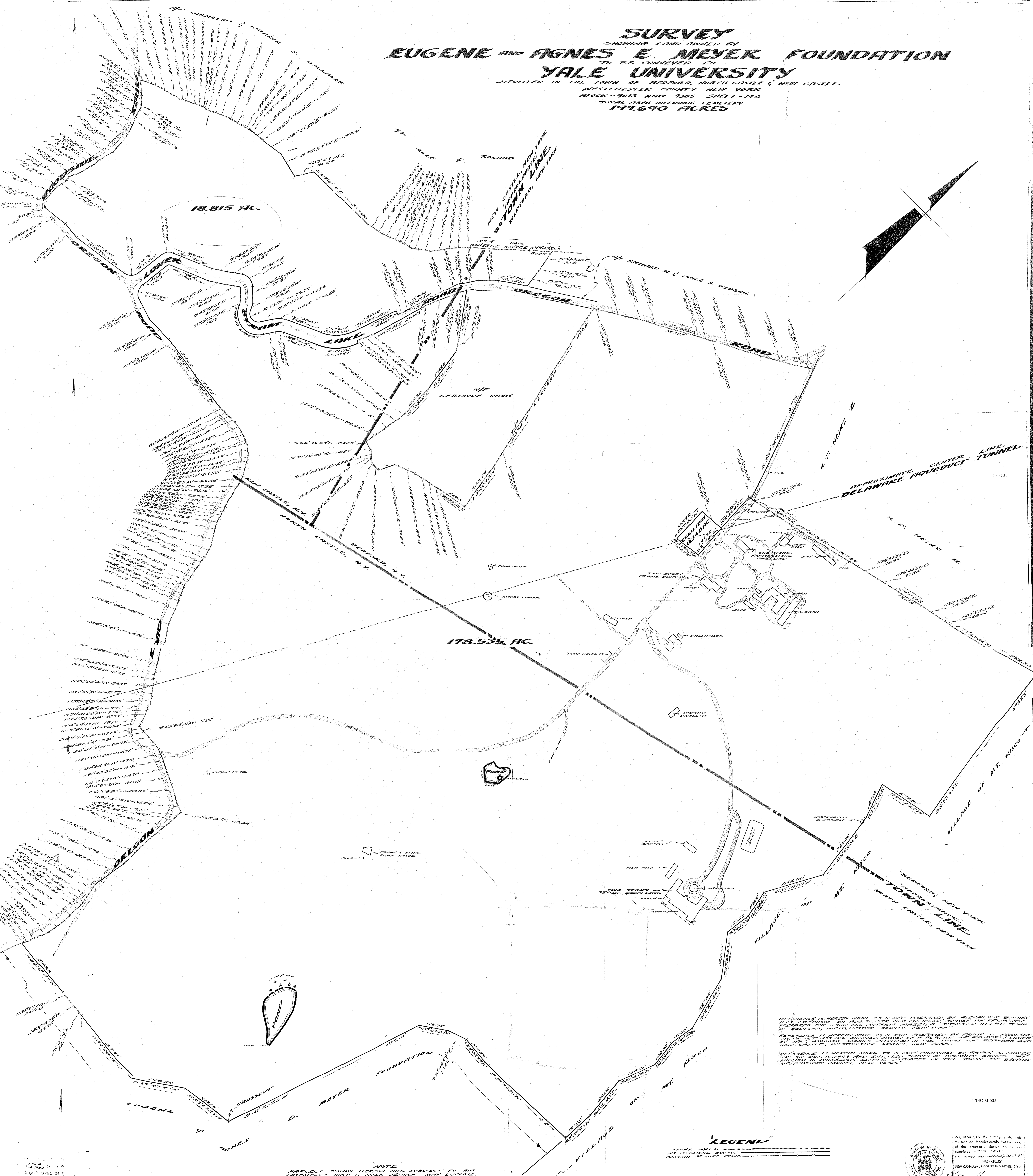
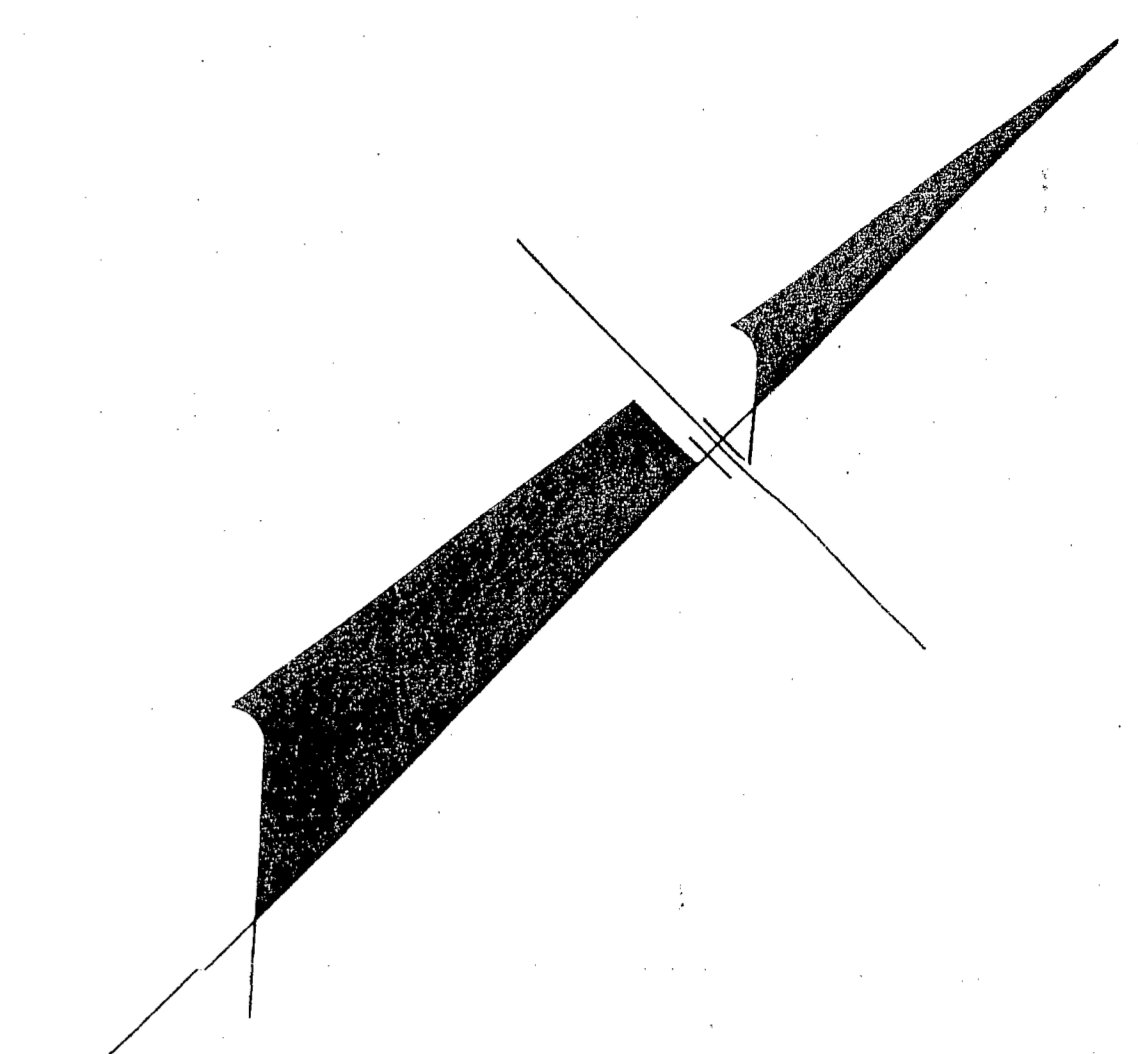


Notary Public
LEONARD BENOWICH
Notary Public, State of New York
No. 02BE5035394
Qualified in Westchester County
Commission Expires October 31, 2014

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33

SURVEY
 SHOWING LAND OWNED BY
EUGENE AND AGNES E. MEYER FOUNDATION
 TO BE CONVEYED TO
YALE UNIVERSITY
 SITUATED IN THE TOWN OF BEDFORD, NORTH CASTLE & NEW CASTLE,
 WESTCHESTER COUNTY, NEW YORK
 BLOCKS 901B AND 9305 SHEET-146
 TOTAL AREA INCLUDING CEMETERY
 177,690 ACRES



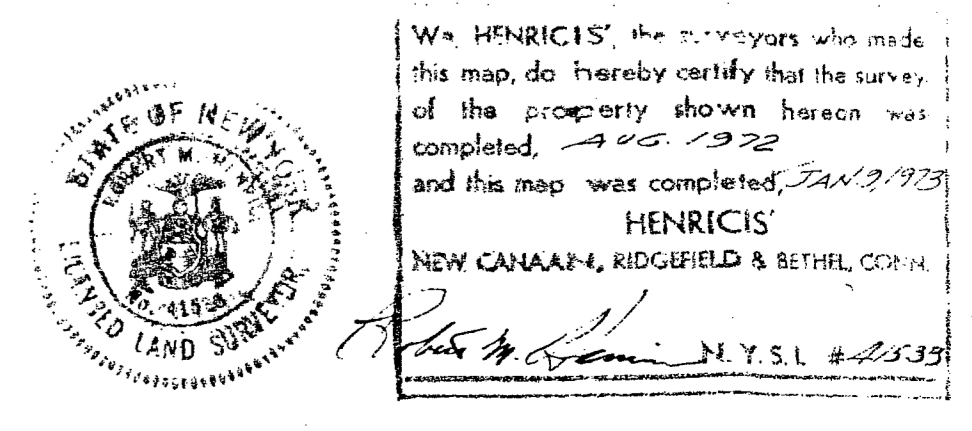
REFERENCE IS HEREBY MADE TO A MAP PREPARED BY ALEXANDER DUNNIEY
 FOR JOHN AND PATRICIA HANZEL, SITUATED IN THE TOWN
 OF BEDFORD, WESTCHESTER COUNTY, NEW YORK.
 REFERENCE IS HEREBY MADE TO A MAP PREPARED BY FRANK J. FOWLER
 FOR ANNE AND EDITH HENRY OF A PORTION OF PROPERTY OWNED
 BY THE HENRY FOUNDATION, SITUATED IN THE TOWN OF BEDFORD AND
 NEW CASTLE, WESTCHESTER COUNTY, NEW YORK.
 REFERENCE IS HEREBY MADE TO A MAP PREPARED BY FRANK J. FOWLER
 FOR THE NEW YORK AND CONNECTICUT LAND COMPANY, SITUATED IN
 THE TOWN OF BEDFORD, WESTCHESTER COUNTY, NEW YORK.

NOTE:
 PARCELS SHOWN HEREON ARE SUBJECT TO ANY
 ENCUMBRANCES THAT A TITLE SEARCH MAY DISCLOSE.

LEGEND
 --- STONE WALL
 --- PHYSICAL BOUNDARY
 --- REMAINS OF WIRE FENCE

SCALE 1"=100'

TNCM-005



2

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 25, 2010.

Selected Entity Name: SEVEN SPRINGS FARM CENTER, INC.

Selected Entity Status Information

Current Entity Name: SEVEN SPRINGS CENTER, INC.

Initial DOS Filing Date: MARCH 05, 1973

County: WESTCHESTER

Jurisdiction: NEW YORK

Entity Type: DOMESTIC NOT-FOR-PROFIT CORPORATION

Current Entity Status: INACTIVE - Dissolution (Aug 30, 1984)

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

NONE

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 12, 1979	Actual	SEVEN SPRINGS CENTER, INC.
MAR 05, 1973	Actual	SEVEN SPRINGS FARM CENTER, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

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NYS Department of State

Division of Corporations

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER: CIVIL TERM

-----X

SEVEN SPRINGS, LLC,

Plaintiff,

v. Index #: 9130/2006

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE,

Defendants.

-----X

Westchester County Courthouse
111 Dr. M.L.K., Jr. Boulevard
White Plains, New York 10601
December 9, 2008

B E F O R E:

HON. RORY J. BELLANTONI,
Supreme Court Justice

A P P E A R A N C E S:

DELBELLO, DONNELLAN, WEINGARTEN WISE &
WIEDERKEHR, LLP

Attorneys for Plaintiff
One North Lexington Avenue
White Plains, New York 10601
By: BRADLEY D. WANK, ESQ.

BENOWICH LAW, LLP

Attorneys for The Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604
By: LEONARD BENOWICH, ESQ.

Betsy Watson
Senior Court Reporter

1

2 A P P E A R A N C E S:
(Cont.)

3

4 OXMAN, TULIS, KIRKPATRICK WHYATT &
GIEGER, LLP

5

Attorneys for the Burkes and Donohoes
120 Bloomingdale Road
White Plains, New York 10605

6

By: LOIS N. ROSEN, ESQ.

7

8

STEPHENS, BARONI, REILLY & LEWIS, LLP
Attorneys for the Town of North
Castle

9

175 Main Street, suite 800
White Plains, New York 10601

10

By: ROLAND BARONI, ESQ.

11

Also present: KRISTIN L. CINQUE, ESQ.

12

13

BOIES, SCHILLER & FLEXNER, LLP

Observer

14

333 Main Street
Armonk, New York 10504

15

BY: OLAV A. HAAZEN, ESQ.

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1 - PROCEEDINGS -

2 not just to end the litigation if it can
3 do so but also to allow the proper
4 development of that property so that it
5 can achieve some ratables. And we had
6 those conversations throughout the
7 summer.

8 The other parties to the litigation
9 were not parties to those settlement
10 discussions, are at least aware that
11 they have been going on.

12 THE COURT: So does the Town or does
13 the Town not own or have an interest in
14 any part of that roadway that you are
15 not objecting to the plaintiff using?

16 MR. BARONI: The Town does not own
17 any part of the road that's closed.
18 That is owned by The Nature Conservancy.

19 THE COURT: So what's the import. of
20 you not objecting to somebody using a
21 road you don't own?

22 MR. BARONI: Well, it had been a
23 public -- it had been opened for many
24 many years as a public road.

25 THE COURT: Right.

1 - PROCEEDINGS -

2 this conference is not only --

3 THE COURT: I'm sorry. Just give me
4 one second.

5 (Whereupon, the Court and his law
6 secretary conferred off the record.)

7 THE COURT: Who was the last Judge
8 to have the underlying? It was LaCava.
9 Then it went to Donovan before it came
10 to me.

11 MR. BENOICH: No, no. It was
12 LaCava and then it went to the Appellate
13 Division.

14 When we made the application for the
15 TRO it was given to Judge Donovan.

16 THE COURT: How extensive were the
17 underlying papers?

18 MR. BENOICH: The papers on that
19 TRO?

20 THE COURT: The underlying.

21 MR. BENOICH: I am not sure.

22 MR. WANK: You mean the motion
23 papers?

24 THE COURT: Which motion?

25 MR. WANK: Well, what happened was

1 - PROCEEDINGS -

2 At his request, or at least with his
3 acquiescence, the discovery stalled
4 until very recently when he decided that
5 they would serve their responses.

6 We did not even know that he was
7 going to serve rather than ask for a
8 further adjournment.

9 So while the status is true, the
10 suggestion that somehow the defendant's
11 have dragged our heels is unfair and it
12 is untrue.

13 MR. WANK: Well, no. I was not
14 suggesting that.

15 I was just pointing out what the
16 facts were when the demands were served.
17 The time has gone by.

18 THE COURT: Can you respond by the
19 16th?

20 MR. BENOWICH: I will have
21 difficulty doing that, your Honor.

22 My client has documents in various
23 offices throughout the state. I have
24 gathered some of them. I don't have all
25 of them. Some of them are --

4

36

AGREEMENT by THE NATURE CONSERVANCY, a District of Columbia corporation, having an office at 1800 North Kent Street, Arlington, Virginia (TNC), in respect of the Meyer Sanctuary (hereinafter defined).

In consideration of the transfer by the Eugene and Agnes E. Meyer Foundation, having its office at 1730 Rhode Island Avenue, N. W., Washington, D. C. (the Foundation), to TNC of two parcels of real property (collectively called the Meyer Sanctuary), one parcel consisting of approximately 122.4 acres, and the other of approximately 108.6 acres, located in the Towns of North Castle and New Castle, Westchester County, State of New York, and more particularly described in a deed from the Foundation to TNC (the Deed), dated the same date as this Agreement and intended to be recorded promptly in Westchester County Clerk's Office, TNC hereby agrees as follows:

1. TNC will promptly apply to the appropriate governmental authorities for the exemption of the Meyer Sanctuary from real property taxes (the Taxes). In the event that TNC is unable to obtain such exemption for all or any part of the Meyer Sanctuary, TNC shall be entitled to promptly reconvey the fee simple title to all or any part of the Meyer Sanctuary not so exempted to the Foundation, or to such other grantee as

the Foundation shall direct in writing, by recordable bargain and sale deed with covenant against grantor's acts and free from all liens or encumbrances (the Reconveyance). In the event that exemption is obtained, but is later denied, canceled or lost for all or any part of the Meyer Sanctuary, TNC shall be entitled to promptly execute and deliver a Reconveyance of all or any part of the Meyer Sanctuary, with respect to which such exemption is denied, canceled or lost, to the Foundation, or to such other grantee as the Foundation shall direct in writing, and in the event of such reconveyance TNC shall repay to the Foundation or such other grantee such proportionate share of the \$200,000 endowment to be received by TNC for the maintenance of the Meyer Sanctuary (the Endowment), as shall then be agreed upon by TNC and the Foundation.

2. In the event that TNC shall at any time fail to continue to maintain all or any part of the Meyer Sanctuary as a nature preserve or in a way which will conserve its essential natural character, TNC will promptly execute and deliver a Reconveyance of all or such part of the Meyer Sanctuary to the Foundation, or to such other grantee as the Foundation shall direct in writing, and TNC shall repay to the Foundation or such other grantee the then balance of the Endowment, or, if TNC shall continue to maintain any part of the Meyer Sanctuary, such proportionate share of the Endowment as shall then be agreed upon by TNC and the Foundation.

3. This agreement shall bind TNC, its successors and assigns, benefit the Foundation, its successors and assigns, and be deemed to run with the land of the Meyer Sanctuary.

Dated:

THE NATURE CONSERVANCY,

By *Elizabeth M. Woodman*


ACCEPTED:

EUGENE AND AGNES E. MEYER FOUNDATION,

By *Davidson Loomer*
chairman

STATE OF VIRGINIA)
) ss.:
COUNTY OF ARLINGTON)

On this 25th day of May 1973, before me personally came Everett M. Woodman, to me, who, being by me duly sworn, did depose and say that he resides at Virginia; that he is President of THE NATURE CONSERVANCY, one of the corporations described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Governors of said corporation.



Notary Public

my commission expires; 12/16/74

TNC000267

District of Columbia } ss.:

On this day of May 1973, before me personally came **DAVID IN SOMMERS**, to me, who, being by me duly sworn, did depose and say that he resides at **3500 WATSON PL. N.W. WASH. D.C.**; that he is **CHAIRMAN** of **EUGENE AND AGNES E. MEYER FOUNDATION**, one of the corporations described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Carol A. Anthony
Notary Public
My Commission Expires March 14, 1975

TNC000268

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37

MEMORANDUM

TO: The File

FROM: Wayne G. Jackson

SUBJECT: Meyer Property

DATE: January 8, 1973

I talked to Mr. Sommers of the Meyer Foundation today on three points.

- 1) We would like to be cut in on any publicity about the transfer of the Meyer property to Yale and TNC. Sommers had written me that publicity would be handled by Newmyer Associates (a Washington firm). Sommers will find out if Newmyer has been approached yet and will let me know. I have kept Jack Lynn up on all this.
- 2) The closing on the 24th of January will presumably be in New York, place as yet unknown. Sommers will keep me informed.
- 3) The most serious point was the suggestion made by the Yale and Foundation lawyers that in the collateral letter between the Meyer Foundation and TNC it be provided that if at some future date TNC found it impractical to preserve the property, or any part of it, TNC would retransfer the property to the Meyer Foundation. The letter, as I had drafted it, provided that in such a contingency, TNC would consult the Foundation re transfer to some other public use. Sommers said Yale was worried that TNC might transfer it to the County for a public park and that a public park adjacent to Yale's property might be deleterious. I said that we had, I thought, much sounder grounds for worry. Yale is getting the property without any strings. If it turned out that it was impractical to use it for seminars and think tanks (which I suspect will be the case), or the pressure on Yale to raise funds becomes intense (and I think the future of all privately maintained colleges holds such pressures), we might find an intensive development next to our sanctuary. TNC is in the business of preserving land and we would be much more concerned about the future of the land coming to us than Yale. Sommers understood my point and will probably

TNC000305

MEMO - Meyer Property
January 8, 1973
Page 2

suggest to the lawyers, whom he is going to call, that the provision be that if we find it impractical to continue the preserve, we will consult the Foundation about its transfer to some use which will preserve its character. This should be all right to us. I pointed out that we wanted representatives of Yale and the Meyer property on the preserve management committee. Sommers will report to us.

WGJ/kj

TNC000306

6

329

ANNEXED TO THE FOREGOING:
EXHIBIT A-FEBRUARY 1998 DRAFT ENVIRONMENTAL IMPACT STATEMENT
[329-330]

SEVEN SPRINGS



DRAFT ENVIRONMENTAL IMPACT STATEMENT
Volume 2

February 1998

RECEIVED
MAR 5 1998
TOWN OF NORTH GADSDEN, ALA.
ANNEMARIE KELLY, Town Clerk

Poor
Quality

Alternatives

2. Access from Oregon Road in North Castle

By eliminating the man-made barricade and improving the existing dirt roadway, it would be possible to extend the existing Oregon Road (south) in North Castle to the north into the Seven Springs site. However, this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this portion of the roadway.

Such a road connection had been suggested as part of the original planning for the Seven Springs project. Hence, it was included in the DEIS scoping document as an alternative. The approximately 1,500 feet of off-site road bed has an average width of 12 feet. It borders steep slopes and wetlands. If it were utilized for site access, widening and grading would be necessary. Retaining walls would be required as part of any proposed construction to minimize excavation and disturbance of steep slopes. The same characteristics would apply regardless of whether the potential road were designed for permanent or emergency access.

3. No Access to Sarles Street

The Seven Springs development could occur with one means of access, rather than two, eliminating the proposed access to Sarles Street. This alternative, shown in Exhibit 5-46 and 5-47, would result in less impact to wetlands, wetland buffers and steep slope areas to the immediate east of Sarles Street. It would also avoid disturbance of the rock wall, regrading, and tree removal required to develop adequate sight distance under the proposed action. The traffic impacts of an alternative with no access to Sarles Street would result in some additional volumes on Oregon Road (north) and at the intersection of Byram Lake Road and Oregon Road.

However, levels of service and recommended improvements would be the same as under the proposed action and the residential alternatives with access to both Sarles Street and Oregon Road (north).

The arrival and departure distributions for the residential development with no access to Sarles Street are shown on Exhibits 5-48 and 5-49. The resulting site generated traffic volumes, illustrated on Exhibits 5-50 to 5-55, were added to the Year 2000 NO-Build Traffic Volumes resulting in the Year 2000 Build Traffic Volumes shown on Exhibit 5-56 to 5-61.

1



**Butler Sanctuary
Meyer Nature Preserve**

R.D. #2, Chestnut Ridge Road
Mount Kisco, New York 10549
(914) 666-4221

February 28, 1989

Mr. Michael Sicuranzo
Highway Department
Town of North Castle
15 Bedford Road
Armonk, NY 10504

Dear Mr. Sicuranzo:

I am greatly pleased that the Town of North Castle has agreed to close lower Oregon Road to prevent illegal dumping. As the Land Steward for the Lower Hudson Chapter of The Nature Conservancy, I have been concerned about the accumulation of trash on the road since the Meyer Nature Preserve, which The Nature Conservancy owns, abuts the road.

I have been in contact with Mr. Gerard Moerschell, Commissioner of Public Works for the Town of New Castle, and he has informed me that due to state regulations, the Town can not close the road but that it will dedicate the road to The Nature Conservancy and Rockefeller University, the other landowner along the section of Oregon Road in question. We may then close the road with a gate, granting easement to Con-Edison and the Town. I am interested in knowing if the Town of North Castle is likely to do the same thing. The attorney for the Town of New Castle is preparing a document for The Nature Conservancy to sign indicating that we will accept the road's dedication.

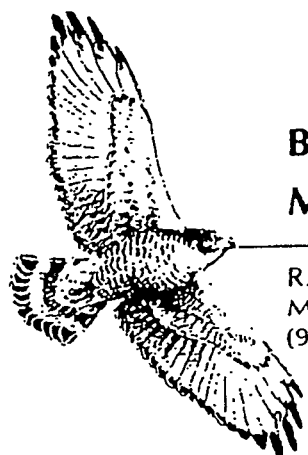
I also am offering the services of myself and local volunteers to help clean up the road once it has been closed. I would like to know when you plan to accomplish this so I may alert volunteers.

Thank you for your consideration. I look forward to hearing from you.

Sincerely,

Greg Seamon
Land Steward





Butler Sanctuary
Meyer Nature Preserve

R.D. #2, Chestnut Ridge Road
Mount Kisco, New York 10549
(914) 666-4221

March 21, 1989

Mr. John A. Lombardi
Supervisor
Town of North Castle
15 Bedford Road
Armonk, NY 10504

Dear Mr. Lombardi:

I was pleased to read in the Patent Trader that the Town of North Castle has decided to close its unpaved section of lower Oregon Road to prevent illegal dumping.

As the Land Steward for the Lower Hudson Chapter of The Nature Conservancy, I wrote to you on November 16, 1988, offering the cooperation of Conservancy volunteers in cleaning up the debris. I also sent a letter to Mr. Michael Sicuranzo of the Town's Highway Department, offering to cooperate in alleviating the dumping problem. To date, I have received no response to either letter.

Enclosed you will find a copy of my letter to Mr. Sicuranzo, a map of the area of the road that I believe should be closed, and copies of correspondence between The Nature Conservancy and the Town of New Castle. The Town of New Castle has proposed to dedicate half the section of lower Oregon Road that is in New Castle to The Nature Conservancy and the other half to Rockefeller University, the only landowners with property along the road, and have that portion of lower Oregon Road removed from the Town maps.

The Nature Conservancy would like to see this accomplished but we will not take ownership of half the road in the Town of New Castle until we know what the Town of North Castle plans to do.



Mr. John A. Lombardi
March 21, 1989
Page 2

I would appreciate it if you would examine the documents from the Town of New Castle and discuss a similar solution with the Town Board of North Castle.

Thank you for your consideration. I look forward to hearing from you soon.

Sincerely,



Greg Seamon
Land Steward

Enclosures

CC: Town of North Castle Board
Betsy Sluder, Town Conservation Board
Joyce Kittredge, Regional Attorney, The Nature Conservancy

TNC000237

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40

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

Index No.: 9130/06

- against -

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.
-----X

**DEFENDANT'S (TOWN OF NORTH CASTLE) RESPONSE TO
THE NATURE CONSERVANCY'S INTERROGATORIES**

- I. State in detail all circumstances surrounding each and every instance when Plaintiff (or anyone acting on its behalf) used, or sought to use, Plaintiff's purported easement over the subject portion of Oregon Road, and for each instance state:
 - a. The name of the person or entity in each such instance;
 - b. The date of each such instance;
 - c. The purpose of each such instance; and
 - d. Whether, in each such instance, the use of the purported easement was by pedestrian and / or vehicular use.

The Town of North Castle is unaware of the details of any specific instances where Plaintiff or anyone on Plaintiff's behalf used or sought to use the subject portion of Oregon Road. However, on information and belief based upon correspondence from the Town's Wetland Consultant, in or about March 2008, there was shrub and sapling removal as well as cutting of dead trees along both sides of the closed portion of Oregon Road. See letter attached hereto at Exhibit 1.

2. State the date when Oregon Road was first used as a public street, road or highway.

The Defendant is unsure of the exact date Oregon Road was first used as a public street, road or highway, but upon information and belief, it was at least since 1970.

3. State in detail all facts known to or believed by North Castle with respect to whether Oregon Road had been used as a public street, road or highway at any time prior to, during or after the time when Eugene Meyer first acquired any parcel of land which is included in either the Seven Springs Parcel or the Nature Conservancy Parcel.

See response to #2, above. See also documents annexed hereto as Exhibit 2.

4. Do you contend that Oregon Road was in use as a public highway on or about:

a. In January 1973?

Yes.

b. In May 1973?

Yes.

c. In April 1984?

No.

d. In December 1995?

No.

5. Unless your response to Interrogatory 10 [sic] is, in each instance, an unqualified "no," describe in detail all facts known to or believed by North Castle which tend to support or contradict the contention that Oregon Road was in use as a public highway, road or street:

a. At any such time, and

b. At any time between January 1973 and the date of your response to this interrogatory.

Oregon Road had been a public road that ran between the Town of North Castle and the Town of New Castle. It had not been used as a highway since

approximately 1980. In May 1990 the Town Board for the Town of North Castle unanimously voted to close Oregon Road, file a Certificate of Discontinuance and order a gate large enough to close the road. On May 10, 1990 a Certificate of Discontinuance was filed with the North Castle Town Clerk's office. The certificate was filed pursuant to §205 of the Highway Law and expressly stated that Oregon Road was no longer being used for public travel, that it was being used to illegally dump undesirable material, that maintaining the road was a waste of public funds and that the affected property owner (Rockefeller University) had consented to the closure.

6. State the date when Oregon Road ceased being used as a public street, road or highway.

The Defendant is unsure of the exact date Oregon Road ceased being used as a public street, road or highway, but upon information in belief it was in or about 1980.

7. Do you contend that any person or entity, other than the Plaintiff, has any easement or right-of-way over any portion of lands owned by The Nature Conservancy?

The Defendant does not take a position on this issue one way or another.

8. Unless your response to Interrogatory 7 is an unqualified "no," state in detail each person or entity (or class of persons or entities) who have any such easement or right-of-way, and for each such person or entity (or class of persons or entities) describe in detail the rights each such person or entity (or class of persons or entities) has in and to over any such lands owned by The Nature Conservancy.

See response to #7 above.

9. Unless your response to Interrogatory 7 is an unqualified "no," state in detail the manner in which, and the date when, each other person or entity (or class of persons or entities) who you contend has any such easement or right-of-way acquired such easement or right-of-way over any such lands owned by The Nature Conservancy.

See response to #7 above.

10. Do you contend that the "barrier" or "gate" described in paragraph 41 of the Complaint is locked?

Yes.

11. Unless your response to Interrogatory 10 is an unqualified "no," state whether Plaintiff has a key to (or the combination, or other ability with which to open) the lock.

Upon information and belief, the Plaintiff does not have the ability to open the lock.

12. Has Plaintiff, or anyone acting on its behalf, requested a key to (or the combination, or other ability with which to open) the lock on the "barrier" or "gate," and if so, identify the person who made each such request and the date of each such request.

Upon information and belief, neither the Plaintiff, nor anyone acting on its behalf, has made any such request.

13. Identify all persons who supplied any information used to prepare North Castle's responses hereto and for each such person identify the information supplied or attach a copy thereof to your responses to these interrogatories.

Records from the Town Hall, Town of North Castle and the files of Stephens, Baroni, Reilly & Lewis were used to prepare these responses.

Dated: April 6, 2009
White Plains, New York

Yours, etc.

STEPHENS, BARONI, REILLY & LEWIS, LLP


By: Kristen L. Cinque, Esq.

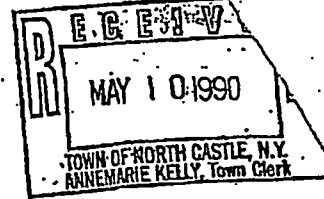
Attorneys for Defendant, Town of North Castle

Northcourt Building
175 Main Street, Suite 800
White Plains, NY 10601
(914) 761-0300

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EXHIBIT E TO BARONI AFFIRMATION -
CERTIFICATE OF DISCONTINUANCE



CERTIFICATE OF DISCONTINUANCE
OF A PORTION OF OREGON ROAD
SITUATED IN THE TOWN NORTH CASTLE

TO: The Town Board of the Town of North Castle
County of Westchester
State of New York

The undersigned presents this certificate and requests that a portion of the town road, known as Oregon Road, be closed at the point designated as "Pole 40" as is more particularly described on a map attached hereto and made a part hereof as Schedule "A".

This request for this partial closure of Oregon Road is based upon the following:

1. The portion of the road being closed (that portion of Oregon Road situated in the Town of New Castle shall also be closed) is no longer used by the public for travel.
2. The area, being remote, is used illegally to dump litter, fill and other undesirable material in violation of local and state laws.
3. The maintenance of the road is a waste of public funds.
4. The affected property owner, The Rockefeller University, has consented to the closing and has adequate ingress and egress to its property by alternative means.

Norman Anderson
Norman Anderson
Highway Foreman

cc: Leo Gustavson
Building & Engineering Department

10

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE
and JOANN DONOHOE,

Defendants.

Index No. 9130/06
Date Filed: 5/15/06

COMPLAINT

RECEIVED

MAY 15 2006

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
DELBELL

Plaintiff, Seven Springs, LLC, by its attorneys,

WEINGARTEN TARTAGLIA WISE & WIEDERKEHR, LLP, for its complaint against defendants, The Nature Conservancy, Realis Associates, The Town of North Castle, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Seven Springs, LLC ("Seven Springs") is a New York Limited Liability Company duly organized under the laws of the State of New York, and having a principal place of business at c/o The Trump organization, 725 Fifth Avenue, New York, New York 10022.
2. Upon information and belief, Defendant, The Nature Conservancy is a District of Columbia Corporation authorized to do business in the State of New York, and having a principal place of business at 570 Seventh Avenue, New York, New York, 10018.
3. Upon information and belief, Defendant, Realis Associates ("Realis"), is a New York Partnership having a principal place of business at 356 Manville Road, Pleasantville, New York.

4. Upon information and belief, Defendant, The Town of North Castle, is a governmental subdivision of The State of New York, which has been organized and exists under and pursuant to the laws of the State of New York, and is located in Westchester County.

5. Upon information and belief, Defendants Robert Burke and Teri Burke are residents of the State of New York, residing at 2 Oregon Hollow Road, Armonk, New York.

6. Upon information and belief, Defendants Noel B. Donohoe and Joann Donohoe are residents of the State of New York, residing at 4 Oregon Hollow Road, Armonk, New York.

7. This action is brought pursuant to Article 15 of the Real Property Action and Proceedings Law to compel the determination of claims to certain real property herein described and known as Oregon Road located in the County of Westchester.

8. Annexed hereto as Exhibit "A", and made a part hereof, are copies of a portion of the Official Map of the Town of North Castle adopted by the Town Board on October 23, 1997 and portion of the official tax map of the Town of North Castle as of July 18, 1986. The portion of Oregon Road which is the subject of this action, as the same is shown on the said Maps, has been highlighted.

9. Seven Springs is the owner of a parcel of property (the "Seven Springs Parcel") comprising approximately 213 acres, and known on the tax assessment map of the Town of New Castle, County of Westchester as ~~Section 24-17, Block 4, Lots 8 and 9~~, on the Tax Assessment Map of the Town of North Castle as ~~Section 2, Block 6, Lots 1 and 2~~, and on the Tax Assessment Map of the Town of Bedford as ~~Section 94-18, Block 1, Lot 1~~ and Section ~~94-14, Block 1, Lot 9~~.

10. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325 Page 243, which deed more particularly describes the Seven Springs Parcel.

11. Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County clerk's office on May 24, 1984 in liber 7923 page 639.

12. Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in liber 7115 page 592.

13. Yale University acquired title to the Seven Springs Parcel from the Eugene and Agnes E. Meyer Foundation (the "Foundation") pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's office on March 27, 1973 in liber 7115, page 577.

14. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel ~~to the south~~ is via the road known as Oregon Road.

15. As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in the County of Westchester and State of New York.

16. Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of Defendant, The Nature Conservancy (the "Nature Conservancy Property").

17. The Nature Conservancy Property and the Seven Springs Parcel was part of certain lands acquired over time by Meyer.

18. By virtue of the various deeds pursuant to which Meyer acquired title to said real property Meyer had acquired the entire bed of Oregon Road as shown on Exhibit "A".

19. Upon information and belief, the Nature Conservancy acquired title to the Nature Conservancy Property from the Foundation by deed dated May 25, 1973 and recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

20. Upon information and belief, the Nature Conservancy Property is situated in the Towns of North Castle and New Castle, County of Westchester and is more particularly described in the aforesaid deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

21. Upon information and belief, since at least 1917 and up until and including May, 1990 when the Town of North Castle allegedly "discontinued" the subject portion of Oregon Road said road was a public street.

22. Upon information and belief, the said portion of Oregon Road referred to herein, at paragraph 8 "ends at its southerly terminus, at the portion of Oregon Road, a legally opened public street, that has been improved and paved.

23. The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described therein together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

24. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

25. By virtue of the December 22, 1995 Deed recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior deeds thereto, and

the facts herein set forth, Plaintiff has a right of way, and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access.

26. That none of the Defendants has any fee interest in or right of user over that portion of the said portion of Oregon Road as described in paragraph 8 hereof, to the exclusion of Plaintiff's right, title and interest in and to Oregon Road.

27. The Defendants and each of them claim, and it appears from the public record that it or they will claim an interest in, and/or the fee title of, the bed of said Oregon Road abutting its or their respective premises as hereinafter set forth, and/or a right to prevent Plaintiff's right of ingress and egress to and from the Seven Springs Parcel to the legally opened portion of Oregon Road.

28. Any estate or interest claimed, or which may be claimed by any Defendant in the premises described in paragraph 8 hereof is invalid and ineffective as against the estate and interest of the Plaintiff therein to a right-of-way and/or easement for ingress and egress over Oregon Road.

29. Any estate, right or interest which Defendant The Nature Conservancy ever had, claims or may claim in the Nature Conservancy Property, or any part thereof, including the estates and interest claimed or which may be claimed by it by virtue of the instruments and facts hereinbefore set forth are ineffective and invalid as against the title and interest of Seven Springs, LLC, its successors in interest, grantees or transferees in and to an easement for ingress and egress over the Nature Conservancy Property.

30. By reason of the foregoing, and the above-referenced deeds and the rights set forth therein, Seven Springs, LLC has ~~fee title in, and to the one-half portion of Oregon Road,~~ as same street/roadway abuts said property on its westerly side, and there is a valid and enforceable easement and/or right of way for ingress and egress for pedestrian and vehicular access over Oregon Road to the south, including over lands owned by The Nature Conservancy and others to the public portion of Oregon Road in favor of Plaintiff, its successors and assigns.

31. Upon information and belief there are no Defendants either known or unknown to Plaintiff not herein joined as a party and there is no Defendant who is or might be an infant, mentally retarded, mentally ill or an alcohol abuser.

32. Any judgment granted herein will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the aforesaid premises, and every person in being who would have been entitled to such estate or interest, if such event had happened immediately before the commencement of the action is named as a party hereto.

33. No personal claim is made against any Defendant herein named unless such Defendant shall assert a claim adverse to the claim of the Plaintiff as set forth herein.

34. None of the Defendants or the parcels owned by them is or will be adversely affected by the relief herein sought.

35. The Defendant, Town of North Castle, is joined herein as a party Defendant by, reason of, among other things, Oregon Road is located in the Town of North Castle, and said municipality purported to close and/or discontinue the portion of Oregon Road which is the subject of this action.

36. The Defendant, Realis Associates, is joined herein as a party Defendant by virtue of having been the developer of the subdivision known as "Oregon Trails" under filed map number 22547, a portion of which abuts the westerly side of Oregon Road.

37. Defendants, Robert Burke and Teri Burke, acquired title to real property known as 2 Oregon Hollow Road, Armonk, New York pursuant to deed dated April 29, 1993 and recorded May 12, 1993 in liber 10576 page 243 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 2 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

38. Defendants, Noel B. Donohoe and Joann Donohoe, acquired title to real property known as 4 Oregon Hollow Road, Armonk, New York pursuant to deed dated July 27, 1994 and recorded August 9, 1994 in liber 10929 page 35 and are joined herein as party Defendants by virtue of their ownership of the title to Lot 1 in the Oregon Trails subdivision, which said property abuts Oregon Road. Upon information and belief the aforesaid deed does not purport to grant any portion of the fee title in or to said Oregon Road or a right of user thereover.

39. Plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

40. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 39 above as if the same were more fully set forth at length herein.

41. That upon information and belief and in or about May, 1990, defendant Town of North Castle allegedly discontinued and caused to be erected and thereafter maintained a barrier on Oregon Road at or near the point designated as "Pole 40" and where the road abuts the public portion of Oregon Road, the barrier consisting of a gate thereby making the aforesaid

section of Oregon Road, as a roadway, impassable to or from Oregon Road to the south by persons in vehicles and depriving plaintiff, plaintiff's visitors, trades people and vehicles and the like their lawful right to pass over the road and to have ingress and egress over the road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

42. That unless the relief be granted to Plaintiff, as hereinafter prayed for, the Plaintiff will suffer irreparable damages and injuries.

43. That plaintiff has no adequate remedy at law.

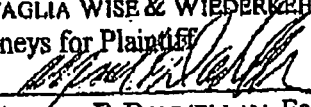
WHEREFORE, Plaintiff demands judgment:

- (1) That the Defendants and each of them and any and every person claiming through or under them and each of them be barred from any and all claim to an estate or interest in the property described in the complaint;
- (2) Declaring that there is a valid and enforceable easement and/or right of way of no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from The Seven Springs Parcel to the south to the section of Oregon Road more particularly identified in Exhibit "A" annexed hereto, including over lands owned by the Nature Conservancy and others, in favor of Plaintiff, its successors and/or assigns.
- (3) Declaring that Seven Springs, LLC has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts the Seven Springs Parcel on its westerly side.

- (4) Declaring that Plaintiff, its successors and assigns also have the right to an easement and/or right of way of no less than 50 feet in width for ingress and egress, and for pedestrian and vehicular access over Oregon Road;
- (5) Enjoining Defendants from interfering with and obstructing Plaintiff's right-of-way and Plaintiff's right of access to Plaintiffs' property as aforesaid.
- (6) That Defendant, Town of North Castle, be directed to remove all obstructions placed and/or maintained by it, on, or across Oregon Road which obstructs the use of Plaintiff, its invitees and utility and other vehicles from their lawful rights to pass over the land and to have ingress and egress over Oregon Road to the Seven Springs Parcel.
- (7) That the Plaintiff have such other, further and different relief in the premises as to the Court may seem just, equitable and proper, together with the costs and disbursements of this action, such costs to be against such Defendants as may defend this action.

Dated: White Plains, New York
May 12, 2006

DELBELLO DONNELLAN WEINGARTEN
TARTAGLIA WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff


By: ALFRED E. DONNELLAN, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER PART RJB

-----X

SEVEN SPRINGS, LLC., :

Plaintiff, :

-against- : INDEX #
: 9130/06

THE NATURE CONSERVANCY, :

REALIS ASSOCIATES, :

THE TOWN OF NORTH CASTLE, :

ROBERT BURKE, TERI BURKE, :

NOEL B. DONOHOE and JOANN :

DONOHOE, :

Defendant. :

-----X

Westchester County Courthouse
111 Dr. Martin Luther King Blvd.
White Plains, New York 10601
March 18, 2008

BEFORE:

HON. RORY J. BELLANTONI,
Acting Justice of the Supreme
Court

HOWARD BRESHIN,
SENIOR COURT REPORTER

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APPEARANCES:

DELBELLO, DONNELLAN, WEINGARTEN, WISE
& WIEDERKEHR, LLP
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BRADLEY D. WANK, ESQ.

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White Plains, New York 10605
BY: JOHN KIRKPATRICK, ESQ.

STEPHENS, BARONI, REILLY & LEWIS, LLP
Attorneys for Defendant Town of North Castle
175 Main Street
White Plains, New York 10601
BY: GERALD REILLY, ESQ.
CHRISTEN HOLT, ESQ.

1
2 The road is cleared. Some weeds grow
3 on it, some twigs and some logs fall on
4 it, but the road is there and it's been
5 there for a very, very long time, and
6 it's accessed, like I said, by Con
7 Edison for utility purposes. It has
8 been accessed from the north by my
9 client for some period of time.

10 THE COURT: When you say from the
11 north, the portion of the road beyond
12 where the gate was put up or the gate
13 was changed?

14 MR. DONNELLAN: Where the gate was
15 put up, and it's also an important
16 point, we actually own that property.
17 There is only a very small portion of
18 this property, of the road that is
19 claimed to be owned by the Nature
20 Conservancy. The bottom portion of
21 it --

22 THE COURT: You own the property
23 where the gate is actually located?

24 MR. DONNELLAN: Yes, your Honor.

25 THE COURT: How far beyond that

12

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ANNEXED TO THE FOREGOING:
EXHIBIT B-JUNE 1998 DRAFT ENVIRONMENTAL IMPACT STATEMENT [331-340]

SEVEN SPRINGS



DRAFT ENVIRONMENTAL IMPACT STATEMENT
Revised Pages

June 1998

2. Access from Oregon Road in North Castle

By eliminating the man-made barricade and improving the existing dirt roadway, it would be possible to extend the existing Oregon Road (south) in North Castle to the north into the Seven Springs site. However, this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs and the western half of the road adjacent to the property, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of this portion of the roadway located south of the site. Both the Nature Conservancy and the Town of North Castle have indicated their disinclination to approve the opening of this route.

Such a road connection had been suggested as part of the original planning for the Seven Springs project. Hence, it was included in the DEIS scoping document as an alternative. The approximately 1,500 feet of off-site road bed has an average width of 12 feet. The dirt road bed is approximately 1,500 feet south of the site and extends to Sault Stee. It borders steep slopes and wetlands. If it were utilized for site access, widening and grading would be necessary. Retaining walls would be required as part of any proposed construction to minimize excavation and disturbance of steep slopes. The same characteristics would apply regardless of whether the potential road were designed for permanent or emergency access.

The accompanying photographs depict the general character of the existing dirt roadway beginning at the barricade south of the site in North Castle and continuing north to Sault Stee in New Castle. The photographs are keyed on symbols 1-4 and are included as Exhibits 1-4.

The existing paved portion of Oregon Road, south ends just beyond the entrance to the subdivision of Oregon to low road. A vertical access road (Old Oregon Road) which continues north is blocked by a site barricade. At this location, grades on the east side of the road slope steeply upward into the Arney View Nature Preserve. On the west side of the road, the grades slope steeply down and toward the subdivision which is characterized by significantly lower elevations than the road bed. Widening and grading the road adjacent to the subdivision would require earth and rock removal and a retaining wall on the eastern side of the road and a retaining wall on the western side of the road. Some utility poles situated on the western side of the road would most likely need to be relocated and

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ANNEXED TO THE FOREGOING:
EXHIBIT D-EXCERPT OF THE RECORD OF THE PUBLIC HEARING HELD IN THE
TOWN OF NORTH CASTLE OF DECEMBER 14, 2000 [362-384]

1
2 STATE OF NEW YORK 1
TOWN OF BEDFORD HILLS
3
4 Minutes of a public Meeting X
in re:
5 SEVEN SPRINGS PROJECT
FINAL ENVIRONMENTAL IMPACT STATEMENT X
6
7 West Patent Elementary School
8 80 West Patent Road
Bedford Hills, New York
9 December 14, 2000
10
11 B E F O R E:
12 Town of Bedford Zoning Board of Appeals
13 Town of North Castle Town Board
14 A L S O P R E S E N T:
15 Joanna P. Meder, AICP
16 SEQR Co-Lead Agency Coordinator
17 Carter, Ledyard & Milburn
Attorneys for the Applicant
18 2 Wall Street
New York, New York 10005
19 BY: JEAN M. MCCARROLL, Esq.
20
21 U.S. LEGAL SERVICES, INC.
22 175 Main Street
White Plains, New York 10601
23 (914) 761-6620

Proceedings

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have a cart path that leads from the maintenance building over to the clubhouse and the main drive that would accommodate some parking and also regular deliveries back and forth to the site.

So our second emergency access, the maintenance driveway would have a gate on it and that limits the use of that access.

Now, a third emergency access that we include as an option and is not shown on the map because we don't propose it, we show it as an option, is a potential access that would lead from the maintenance building snaking down to Old Oregon Road.

Old Oregon Road here in North Castle is a road that exists. It is demapped by the Town of North Castle. It is paved and used for pedestrian access. People that use it are really going to the Nature Conservancy land.

The option but not the proposal in

Proceedings

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1
2 the plan says you could have that as an
3 access and could be improved all the
4 way up to Sarles Street. We don't own
5 that road, we own a piece of it. It is
6 owned by the Nature Conservancy, about
7 half of it, and we don't really think a
8 third emergency access is necessary,
9 but upon request by the Co-Lead Agency,
10 we have included it and shown it as an
11 option.

12 While I am down at the maintenance
13 building I just want to note that we
14 have been trying our best to move the
15 maintenance building further and
16 further away from Doctor Mazella's
17 property. We have moved it to the
18 south. He provided some additional
19 buffering, and upon request at one of
20 the last meetings, we are now proposing
21 in the FEIS that we have a nine foot
22 fence wall separating the driveway of
23 the maintenance building from the
24 wooded area that is buffered to the
25 Mazella property. That is a change

14

elle

Responses to FEIS Hearing Comments

Oregon Road in Bedford and not vigorously pursued opening up one or both of the inactive roads?

Why does The Nature Conservancy oppose access, under any circumstances, from Oregon Road, North Castle? Does it also oppose access to Oregon Road from Sarles Street in New Castle? If this access were mandated by fire and emergency code, would The Nature Conservancy then not accept the generous proposal of 31 acres? (Comments made by John Mazella)

Response:

As described in the DEIS and FEIS, the "active" access points to the site include the main entrance and Nonesuch driveways on Oregon Road in Bedford. "Inactive" or former access points to the site which are currently blocked include: Oregon Road in Bedford just past the Mazella property, Southgate Road (leads onto the Meyer Nature Preserve to the south), Old Oregon Road (connecting to Meyer Preserve in North Castle to the south and Sarles Street in New Castle to the north). See FEIS Exhibit 2-5 describing Existing Site Features for locations.

The applicant is proposing to use the existing main entrance for access to the club, and two separate new driveways for access to Lot 1 and Nonesuch. In addition, a gated driveway to serve the maintenance area is proposed on Oregon Road in Bedford east of the Mazella property. The existing Nonesuch driveway is proposed to remain in order to have it available for emergency use only.

The "inactive roads" (Old Oregon Road through North Castle) have all been pursued and discussed as Alternatives in the DEIS and FEIS, and are not found to be viable, and therefore not proposed. The DEIS describes potential access from the south via Old Oregon Road in North Castle in Volume 2, pages V-122 through V-130. This includes written description of that roadway as well as photographs (see DEIS Exhibits 5-45a, 5-45b) and a general discussion of what physical constraints are present, as well as the ownership of this road. As stated in the DEIS (page V-122) "this road connection, in the absence of condemnation, would require approval from The Nature Conservancy, which fully owns the entire road bed south of Seven Springs and the western half of the road adjacent to the property, and from the Town of North Castle, which officially closed the road in 1990. At the present time, the owners of the Seven Springs site have no rights to utilize any part of the portion of the roadway located south of the site. Both The Nature Conservancy and the Town of North Castle have indicated their disinclination to approve the opening of this route." See also FEIS response to comments B119, B120, B121 where this issue is addressed.

The applicant cannot comment on what The Nature Conservancy would do regarding access and/or its objections to allowing an emergency access from Oregon Road, North Castle.

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To be Argued by:
BRADLEY D. WANK
(Time Requested: 15 Minutes)

New York Supreme Court
Appellate Division—Second Department

SEVEN SPRINGS, LLC,

Plaintiff-Appellant,

Docket No.:
2006-11431

— against —

THE NATURE CONSERVANCY, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE
and JOANN DONOHOE,

Defendants-Respondents,

— and —

REALIS ASSOCIATES,

Defendant.

BRIEF FOR PLAINTIFF-APPELLANT

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff-Appellant
The Gateway Building
One North Lexington Avenue, 11th Fl.
White Plains, New York 10601
(914) 681-0200

located in the Easement Area which provides electrical service to property located on the Seven Springs Parcel. (R. 137).

The Plaintiff intends to improve the existing dirt road over the Easement Area with a road that is approximately 20 feet in width, which is commensurate with the paved section of Oregon Road. The road will blend in with the terrain, and is intended for, and will be strictly limited to, use by emergency vehicles only. In addition, the road will have at its southerly terminus a gate that can only be opened and closed by an infra-red line of sight transmitter that is restricted to emergency vehicles. The road proposed by Plaintiff will enhance the Easement Area, and provide for better security than is currently in place. (R. 138).

A certified title search was conducted of the chain of title of the Seven Springs Parcel and adjoining properties as of April, 2006. (R. 138, 162-164). The search of the Westchester County Clerk's records of the record owners of the Seven Springs Parcel and The Nature Conservancy Property as of April 26, 2006 certified by Fidelity National Title Insurance Company of New York and dated August 15, 2006 reveals the following:

As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in Westchester County.

all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof', Seven Springs has fee title in and to the easterly one-half portion of Oregon Road, as the road abuts the Seven Springs Parcel on its westerly side. (R. 162-164). Furthermore, as a result of the legal descriptions contained in the deeds into Meyer, specifically the references in the deeds to the properties being bounded by Oregon Road, Seven Springs and Nature Conservancy, Seven Springs has a non-exclusive private easement as it abuts its property as well as over The Nature Conservancy Property and others to the public portion of Oregon Road to the south. (R. 164).

The law firm of Stephens Baroni Reilly & Lewis, LLP, the attorneys for the Town of North Castle in this action, had previously requested that another title company, Fidelity Title, Ltd., also search the chain of title of Oregon Road, specifically for easement and access rights in favor of Seven Springs, LLC over Oregon Road. By letter dated February 16, 2006 to Mr. Baroni, Fidelity Title, Ltd. confirmed that Seven Springs, LLC has a private easement for access over Oregon Road. (R. 192, 193).

A deed describing land being conveyed as bounded by a road owned by the grantor impliedly grants an easement in the road unless the parties' intention is to the contrary. See, 49 NYJur 2d Easements § 54. When there is a claim of an easement by implication, it generally raises a question of the intent of the parties to be determined in light of all the circumstances. See BJ 96 Corp. v. Mister, 222 A.D.2d 798, 799, 634 N.Y.S.2d 843, 845 (3d Dept. 1995). For example, in Glennon v. Mayo, 221 A.D.2d 504, 633 N.Y.S.2d 400 (2d Dept. 1995) property owners established an implied easement over a private road by virtue of a reference to the private road as a boundary in the deed which created their parcel, and of the surrounding circumstances.

When a grantor owning the fee to a street sells property bounding on the street, the deed creates easements over the street to its full width in favor of the grantee and his or her successors. See In re Thirty-First (Patterson) Ave., 152 Misc. 849, 854, 273 N.Y.S. 757, 763 (Sup. 1934). Where a deed describing land as bounded by a way indicates that the way extends beyond the land conveyed, or there has been some other indication of the extent of the way, the grantee acquires a right to the way not merely in front of his or her property but to the full extent of the way as indicated. See In re

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SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES, THE TOWN OF
NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Defendants.

Index No. 9130/06

**ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM OF
THE NATURE CONSERVANCY**

Defendant The Nature Conservancy ("TNC"), by its attorneys, Benowich Law, LLP, as and for its answer to the Amended Complaint ("Complaint") and its Counterclaim against Plaintiff, alleges as follows:

As to the First Cause of Action

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Admits the allegations contained in paragraph 2 of the Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

7. Denies each and every allegation contained in paragraph 7 of the Complaint, except admits that plaintiff purports to bring this action pursuant to Article 15 of the Real Property Actions and Proceedings Law.

8. Denies each an every allegation contained in paragraph 8 of the Complaint, and refers the Court to the document referred to therein for its contents.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and refers the Court to the deed referred to therein for its contents.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and refers the Court to the deed referred to therein for its contents.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and refers the Court to the deed referred to therein for its contents.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and refer the Court to the deed referred to therein for its contents.

14. Denies each and every allegation contained in paragraph 14 of the Complaint.

15. Admits the allegations contained in paragraph 15 of the Complaint, upon information and belief.

16. Denies each and every allegation contained in paragraph 16 of the Complaint.

17. Denies each and every allegation contained in paragraph 17 of the Complaint, except admit that the lands owned by TNC - referred to in the Complaint as the "Nature Conservancy Property" - were owned at one time by Eugene Meyer, Jr. ("Meyer")

18. Admits the allegations contained in paragraph 18 of the Complaint.

19. Admits the allegations contained in paragraph 19 of the Complaint.

20. Denies each and every allegation contained in paragraph 20 of the Complaint, and refers the Court to the deed referred to therein for its contents.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Denies each and every allegation contained in paragraph 22 of the Complaint.

23. Admits the allegations contained in paragraph 23 of the Complaint.

24. Denies each and every allegation contained in paragraph 24 of the Complaint, and refers the Court to the deed referred to therein for its contents.

25. Denies each and every allegation contained in paragraph 25 of the Complaint.

26. Denies each and every allegation contained in paragraph 26 of the Complaint.

27. Denies each and every allegation contained in paragraph 27 of the Complaint.
28. Denies each and every allegation contained in paragraph 28 of the Complaint, except admits that TNC does claim an interest in, and/or the fee title of, the bed of Oregon Road and that Plaintiff has none of the rights or interests which it asks this Court to declare in its favor.
29. Denies each and every allegation contained in paragraph 29 of the Complaint.
30. Denies each and every allegation contained in paragraph 30 of the Complaint.
31. Denies each and every allegation contained in paragraph 31 of the Complaint.
32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.
33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.
34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.
35. Denies each and every allegation contained in paragraph 35 of the Complaint.
36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.
37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.
38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.
39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Denies each and every allegation contained in paragraph 40 of the Complaint.

As to the Second Cause of Action

41. Defendant repeats and realleges each and every responsive pleading set forth above in paragraphs 1 through 40.

42. Denies each and every allegation contained in paragraph 41 of the Complaint, except admits that, as a matter of record, in or about May 1990, defendant Town of North Castle duly acted, in accordance with New York law, to close a portion of Oregon Road, at the point designated as "Pole 40," for the reasons stated in the Certificate of Discontinuance.

43. Denies each and every allegation contained in paragraph 43 of the Complaint.

44. Denies each and every allegation contained in paragraph 44 of the Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

46. Denies each and every allegation contained in paragraph 46 of the Complaint.

47. Admit the allegations contained in paragraph 47 of the Complaint.

48. Denies each and every allegation contained in paragraph 48 of the Complaint, and respectfully refers the Court to the Decision referred to therein for its contents and its legal effect.

49. Denies knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 49 of the Complaint, and denies that title to any portion of Oregon Road was owned or reverted to Rockefeller University.

50. Denies each and every allegation contained in paragraph 50 of the Complaint.

51. Denies each and every allegation contained in paragraph 51 of the Complaint.

52. Denies each and every allegation contained in paragraph 52 of the Complaint.

53. Denies each and every allegation contained in paragraph 53 of the Complaint.

First Affirmative Defense

The Complaint fails to state a cause of action.

Second Affirmative Defense

The Complaint is barred, in whole or in part, by the applicable statute of limitations.

Third Affirmative Defense

The Complaint is barred, in whole or in part, by the doctrines of waiver, laches and/or estoppel.

Fourth Affirmative Defense

The Complaint is barred, in whole or in part, by the applicable Statute of Frauds.

Fifth Affirmative Defense

The Complaint is barred, in whole or in part, because no easement or right-of-way was intended to be, nor was, conveyed to Plaintiff or its predecessors-in-title, by any of the deeds referred to in the Complaint.

Sixth Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished, prior to the time Plaintiff obtained title thereto, by Plaintiff's predecessor-in-title's abandonment, consent to the closing or discontinuance thereof and/or consent or acquiescence to the Town of North Castle's installation of a locked barrier or gate at "Pole 40."

Seventh Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished, prior to the time Plaintiff obtained title thereto, by the merger of the dominant and servient estates into the ownership of Meyer.

Eighth Affirmative Defense

The Complaint is barred, in whole or in part, because any easement or right-of-way claimed by Plaintiff was extinguished by adverse possession.

Ninth Affirmative Defense

The Complaint is barred, in whole or in part, because Plaintiff knew or should have known, at the time it acquired the so-called Seven Springs Parcel that Oregon Road was closed, that no public road, street or way existed at that place and time and that no private easement over Oregon Road was intended to be, or had been, conveyed.

Tenth Affirmative Defense

The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel include one or more parcels of land that did not belong to, and were not acquired from, Meyer but which were acquired by Plaintiff or its predecessor-in-title after any claimed easement was extinguished. No easement may be implied where, as here, its use will benefit additional, or after-acquired parcels.

Eleventh Affirmative Defense

The Complaint is barred, in whole or in part, because the parcels of land that comprise the Seven Springs Parcel have frontage on and access to a public highway to the northern portion of the Seven Springs Parcel.

Twelfth Affirmative Defense

The Complaint is bared, in whole or in part, because Plaintiff does not own, and never acquired, title to any portion of the bed of Oregon Road lying to the westerly side of the Seven Springs Parcel.

Counterclaim

1. TNC is a not for profit corporation organized and existing under the laws of the District of Columbia.
2. Upon information and belief, Plaintiff Seven Springs, LLC ("Seven Springs") is a limited liability company organized and existing under the laws of the State of New York.
3. In May 1973 TNC acquired approximately 230 acres of land situate in the Towns of New Castle and North Castle, from the Eugene and Agnes E. Meyer Foundation ("Foundation"), pursuant to and as described in a deed dated May 25, 1973 and recorded on May 30, 1973 in the Westchester County Clerk's Office, in Liber 7127, Page 719.
4. The TNC Parcel, as conveyed to TNC by the Foundation, includes fee simple title to Oregon Road and the lands over which Plaintiff asserted, for the first time in this action, an implied easement (the "Purported Easement Area").
5. The Foundation conveyed the TNC Parcel to TNC as a gift with the intention that TNC would maintain the TNC Parcel, and every part thereof, including the Purported Easement Area, as a nature preserve and sanctuary.

6. At all times relevant herein since May 1973, TNC has owned the TNC Parcel, including the Purported Easement Area, and has maintained such lands as a nature preserve and sanctuary.

7. At all times relevant since May 1973, TNC has permitted only limited use of the TNC Parcel, including of the Purported Easement Area, for the purposes of hiking and walking.

8. Signs posted at and about the TNC Parcel, including at the Purported Easement Area, state:

NATURE SANCTUARY

NO CAMPING HUNTING, TRAPPING FISHING FIRES OR PETS

NO REMOVAL OR DESTRUCTION OF PLANTS OR WILDLIFE

MOTOR VEHICLES PROHIBITED

9. In this action for the first time, Plaintiff has claimed an easement or right of way over the Purported Easement Area, which Plaintiff acknowledges is owned by TNC.

10. In this action, for the first time, Plaintiff claims to own title to the centerline of that portion of Oregon Road which lies to the westerly side of the Seven Springs Parcel.

11. Upon information and belief, commencing in or about February or March 2008, without seeking or obtaining TNC's consent or permission, Plaintiff caused its employees or agents to enter and trespass upon the TNC Parcel (including Oregon Road) and the Purported Easement Area for purposes and uses which are not permitted and which are inconsistent with TNC's rights in and to the TNC Parcel (including Oregon Road) and the Purported Easement Area.

12. Upon information and belief, Plaintiff or its agents or employees have, among other things, entered upon the TNC Parcel (including Oregon Road) and the Purported Easement Area with motor vehicles and removed vegetation from the TNC Parcel, Oregon Road and/or the Purported Easement Area.

13. Plaintiff has no rights in, to, or over the TNC Parcel (including but not limited to that portion known as Oregon Road) or the Purported Easement Area, and it has no rights to enter upon the TNC Parcel or the Purported Easement Area with motor vehicles or to remove vegetation therefrom, or otherwise inconsistent with the aforesaid posted regulations.

14. Plaintiff has unlawfully trespassed upon the TNC Parcel and the Purported Easement Area, and has engaged in conduct and activities that are offensive to and inconsistent with TNC's use and maintenance of the TNC Parcel and the Purported Easement Area as a nature preserve and sanctuary.

15. Unless restrained and enjoined from doing so, Plaintiff will continue to enter upon, alter, and use the TNC Parcel and the Purported Easement Area in violation of the posted regulations, thereby irreparably harming the natural state thereof and TNC's rights in and to the TNC Parcel.

16. TNC has no adequate remedy at law.

WHEREFORE, Defendant TNC demands judgment as follows:

A. A permanent injunction restraining and enjoining Plaintiff Seven Springs, its agents and employees, successors and assigns, from:

(1) entering upon the TNC Parcel, including but not limited to Oregon Road, and the Purported Easement Area with any motor vehicle, or

for any purpose other than in accordance with TNC's posted regulations for the use thereof; and

- (2) performing any work (including but not limited to cutting or removing any vegetation, shrubbery, bushes or trees; roadway grading; excavation; paving or preparing a roadway for paving; rock and/or debris removal) upon the TNC Parcel including but not limited to Oregon Road and the Purported Easement Area; and

- B. Such other and further relief as this Court shall deem just, proper and equitable, together with the costs and disbursements of this action.

Dated: April 23, 2008

BENOWICH LAW, LLP

By: 

Leonard Benowich

1025 Westchester Avenue

White Plains, New York 10604

(914) 946-2400

Attorneys for Defendant

The Nature Conservancy

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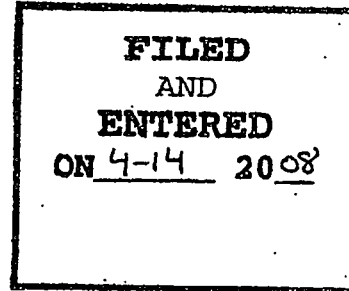
AT the Supreme Court, Westchester County,
at the County Courthouse, 111 Dr. Martin
Luther King, Jr., Blvd., White Plains, New
York, on April 14, 2008

PRESENT: RORY J. BELLANTONI
COUNTY COURT CHAMBERS

HON:

RORY J. BELLANTONI,

Acting Justice.



-----X
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE,
NOEL B. DONOHOE and JOANN DONOHOE;

**ORDER GRANTING
PRELIMINARY INJUNCTION**

Defendants.
-----X

Defendant The Nature Conservancy ("TNC") having moved this Court, by order to show cause dated March 18, 2008, for a temporary restraining order and preliminary injunction ("Motion"), and this matter having come on to be heard before the Court on March 18, 2008 and on April 4, 2008, and the Court having considered the following papers in support of and in opposition to the Motion, all with due proof of service thereof: (1) the Order to Show Cause dated March 18, 2008, supported by the Affirmation of Leonard Benowich, Esq., dated March 13, 2008, the Affidavit of Amy Fenno, sworn to March 11, 2008, and the Affidavit of Jamie Norris, sworn to March 13, 2008, together with Exhibits 1-18 annexed thereto, and a

memorandum of law dated March 13, 2008, in support of the Motion; (2) the affidavit of Alfred Donnellan, Esq., sworn to March 17, 2008, and Exhibits A-E annexed thereto (on behalf of Plaintiff Seven Springs, LLC), and a memorandum of law dated March 17, 2008, in opposition to the Motion; (3) the Affidavit of Alfred Donnellan, Esq., sworn to March 26, 2008, and Exhibits A-G thereto (on behalf of Plaintiff Seven Springs, LLC) and a memorandum of law dated March 26, 2008, in opposition to the Motion; (4) the Reply Affirmation of Leonard Benowich, dated April 2, 2008, and Exhibits 19-22 annexed thereto, and a reply memorandum of law dated April 2, 2008, in support of the Motion; (5) the affirmation of John B. Kirkpatrick, Esq., sworn to April 2, 2008 (on behalf of defendants Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe), in support of the Motion; and (6) the affirmation of Gerald D. Reilly, Esq., dated April 2, 2008 (on behalf of defendant The Town of North Castle), in support of the Motion; and the parties, by their respective counsel, having been heard on March 18, 2008 in support of and in opposition to TNC's application for a temporary restraining order; and the Court having issued a temporary restraining order on March 18, 2008, and having directed that the parties appear on April 4, 2008 for oral argument of that portion of the Motion which sought a preliminary injunction; and the parties, by their respective counsel, having appeared before this Court for oral argument with respect thereto; and the Court, after hearing the arguments of counsel and upon due deliberation and consideration of the foregoing, having rendered its decision on the record of the proceedings held on April 4, 2008;

NOW, on Motion of BENOWICH LAW, LLP, counsel of record for defendant TNC, it is hereby

ORDERED, that TNC's Motion for a preliminary injunction is granted; and it is further ORDERED, that during the pendency of this action, Plaintiff, its agents, employees and contractors, and all persons having knowledge of this Order or acting in concert with any of the foregoing, be and they hereby are preliminarily enjoined from:

(a) entering upon the lands owned and/or maintained by TNC as the Eugene and Agnes B. Nature Preserve ("Nature Preserve") (i) with any vehicle, equipment or machinery; and (ii) for any purpose other than to walk or hike upon same (*provided, however*, that surveyors employed or retained by Plaintiff may walk upon and conduct land surveys from and of the aforementioned premises, provided that any equipment they bring with them must be carried by-hand by one person); and

(b) performing any work upon any land owned by TNC, including that portion ~~of~~ of Oregon Road which lies or is contained within the Nature Preserve and which is the subject matter of this action (such work includes, by way of illustration and not limitation, cutting or removing any vegetation, shrubbery, bushes or trees; roadway grading; excavation; paving or preparing a roadway for paving; rock and/or debris removal); and it is further

ORDERED, that within ten (10) days of service of a copy of this order with notice of entry, TNC shall give and file an undertaking in the amount of One Hundred Thousand Dollars (\$100,000).

ENTER:



Rory J. Bellantoni, A.J.S.C.

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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF WESTCHESTER

3 - - - - -X
4 SEVEN SPRINGS LLC,

4 Plaintiff

5 -against- Index 9130-06

6 THE NATURE CONSERVANCY, REALIS ASSOCIATES
7 ASSOCIATES, THE TOWN OF NORTH CASTLE,
8 ROBERT BURKE, TERI BURKE, NOEL B. DONOHOE
9 and JOANN DONOHOE,

8 Defendants

9 - - - - -X
10 SEVEN SPRINGS LLC,

10 Plaintiff

11 -against- Index 5484-08

12 THE TOWN OF NORTH CASTLE,
13 Defendants.

13 - - - - -X

14 March 31 2009
15 111 Dr. Martin Luther King, Jr. Blvd.
16 White Plains, New York 10601

16 HONORABLE RORY J. BELLANTONI, Justice

17

18 A P P E A R A N C E S (PAGE 1 of 2):

19 BRADLEY D. WANK, ESQ.
20 For the Plaintiff

21 LEONARD BENOWICH, ESQ.
22 For the Nature Conservancy

23 ERIC M. SANDERS, SR. COURT REPORTER
24 Westchester County Courthouse
(914) 824-5763/EMSREPORTER@YAHOO.COM

2 A P P E A R A N C E S (PAGE 2 of 2):

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5

JOHN KIRKPATRICK, ESQ.
For Donohoe & Burke

6

7

ROLAND A. BARONI, JR., ESQ.
- and -
KRISTEN L. CINQUE, ESQ.

8

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For the Town of North Castle

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ERIC M. SANDERS, SR. COURT REPORTER
Westchester County Courthouse
(914) 824-5763/EMSREPORTER@YAHOO.COM

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open-ended at this point, and discuss with your client, and your client, how you want to proceed, you know, I can give you a date by which you have to decide and let everybody know; whether you're simply going to make a motion, and try to convince me, based on the argument, in the writing, and case law, that I should accept this, as is.

Or, whether, you are simply going to provide a much shorter, general stipulation of discontinuance, and then enter into whatever agreement you want, on your own, you can do that, if you want.

Tell me how long it will take you to make that decision. I'll give you two weeks? A week? How much --

MR. BARONI: Two weeks.

MR. WANK: Two weeks.

THE COURT: I'll give you two weeks to make that decision. And within two weeks, I'll expect a letter to myself and all parties, that you are either going to make the motion, and then I'll give you 30 days from -- so I

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guess it would be 6 weeks before the motions.

Any objection to the time frame, Counsel? If I give them two weeks to make a decision, and then 30 days to make the motion, any objection?

MR. BENOWICH: No, I have no objection to it; provided that we will be able to make a joint application to extend the discovery cut off, because we're going to need to do that, once this is --

THE COURT: But then nobody's rights will be prejudiced, as far as the discovery goes, considering --

MR. BENOWICH: No, no. I --

THE COURT: -- I'll extend all of those.

MR. BENOWICH: That's all.

MR. BARONI: Your Honor, just -- within the last -- I don't know -- seven or eight days, Mr. Benowich served on North Castle some additional discovery requests.

We're out of the case, for all intents and purposes, we believe. And to have

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to spend more -- first of all, the discovery demand is a way overdue, by months.

MS. CINQUE: It was December 19th, the last time we were in court.

MR. BARONI: The discovery demands should have been served by December 19th. We got them seven or eight days ago; and only in response to our -- the knowledge that we were settling the case. But we don't think that we should have to respond to those requests. And part of the motivation here, for the town removing from the case, is to stop bleeding the fees involved.

MR. BENOWICH: That's very interesting, Judge.

THE COURT: Well, let's stop; because now I'm a bit confused.

Whether it comes as a formal discovery request, or if you're out of the case as a subpoenaed, don't you have to provide the same documents?

MR. BARONI: That would be fine.

We'll do whatever we have to do. If

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they FOIL information or they subpoena information, that's fine. But we don't think that we should have to adhere to a discovery demanded that's months and months overdue, and it's just been served in response to the knowledge that we're settling.

MR. BENOWICH: Your Honor, this changed everything. His position in this case; he's still sitting at counsel table. He's not been discontinued. He's subject to discovery.

The fact that we made a demand on his client after we learned that his client wanted to get out -- because we didn't have the opportunity to do it beforehand, when we scheduled all of this and thought he was still a defendant -- now he's planning to cooperate with the plaintiff; give them anything he wants. But I have to serve a subpoena? I'm now getting an objection that I'm late?

THE COURT: Well, now -- and, again, this now begs the question -- raises another question, which is, I have this document in front of me, this stipulation, dated

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE,

Defendants.
-----X

Index No. 21162/09
Date Filed: 9/22/09

SUMMONS

RECEIVED
SEP 22 2009
TIMOTHY C. IDOM
COUNTY CLERK
COUNTY OF WESTCHESTER

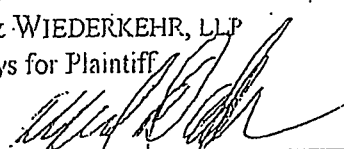
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Westchester County as the place of trial. The basis of venue is the Defendants reside or have a place of business in, and the cause of action arose in, the County of Westchester.

Dated: White Plains, New York
September 22, 2009

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff


By: ALFRED E. DONNELLAN, ESQ.
BRADLEY D. WANK, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

TO: THE NATURE CONSERVANCY
570 Seventh Avenue
New York, New York 10018

ROBERT BURKE
2 Oregon Hollow Road
Armonk, New York 10504

TERI BURKE
2 Oregon Hollow Road
Armonk, New York 10504

NOEL B. DONOHOE
4 Oregon Hollow Road
Armonk, New York 10504

JOANN DONOHOE
4 Oregon Hollow Road
Armonk, New York 10504

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE,

Defendants.
-----X

Index No. 21162/09
Date Filed: 9/22/09

COMPLAINT

RECEIVED
SEP 22 2009
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Plaintiff, Seven Springs, LLC, by its attorneys, DELBELLO DONNELLAN
WEINGARTEN WISE & WIEDERKEHR, LLP, for its complaint against defendants, The Nature
Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joanne Donohoe, alleges, upon
information and belief, as follows:

1. Plaintiff, Seven Springs, LLC ("Seven Springs") is a New York Limited
Liability Company duly organized under the laws of the State of New York, and having a
principal place of business at c/o The Trump organization, 725 Fifth Avenue, New York, New
York 10022.

2. Upon information and belief, Defendant, The Nature Conservancy is a
District of Columbia Corporation authorized to do business in the State of New York, and has a
place of business located in the Town of North Castle, Westchester County, New York.

3. Upon information and belief, Defendants Robert Burke and Teri Burke
(collectively referred to herein as "Burke") are residents of the State of New York, residing at 2
Oregon Hollow Road, Armonk, New York.

4. Upon information and belief, Defendants Noel B. Donohoe and Joann Donohoe (collectively referred to herein as "Donohoe") are residents of the State of New York, residing at 4 Oregon Hollow Road, Armonk, New York.

5. Seven Springs is the owner of a parcel of property (the "Seven Springs Parcel") comprising approximately 213 acres, and known on the tax assessment map of the Town of New Castle, County of Westchester as Section 94.17, Block 1, Lots 8 and 9, on the Tax Assessment Map of the Town of North Castle as Section 2, Block 6, Lots 1 and 2, and on the Tax Assessment Map of the Town of Bedford as Section 94.18, Block 1, Lot 1 and Section 94.14, Block 1, Lot 9.

6. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325 Page 243, which deed more particularly describes the Seven Springs Parcel.

7. Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County clerk's office on May 24, 1984 in liber 7923 page 639.

8. Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in liber 7115 page 592.

9. Yale University acquired title to the Seven Springs Parcel from the Eugene and Agnes E. Meyer Foundation (the "Foundation") pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's office on March 27, 1973 in liber 7115, page 577.

10. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road.

11. As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in the County of Westchester and State of New York.

12. Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of The Nature Conservancy (the "Nature Conservancy Property").

13. The Nature Conservancy Property and the Seven Springs Parcel were part of certain lands acquired over time by Meyer.

14. The Nature Conservancy acquired title to the Nature Conservancy Property from the Foundation by deed dated May 25, 1973 and recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

15. The Nature Conservancy Property is situated in the Towns of North Castle and New Castle, County of Westchester and is more particularly described in the aforesaid deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

16. The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described therein together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

17. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

18. By reason of the foregoing and the December 22, 1995 Deed recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior

deeds thereto, and the facts herein set forth, Plaintiff has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts said property on its westerly side, and has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified and highlighted (the "Easement" or "Easement Area") on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access. Annexed hereto as Exhibit "A", and made a part hereof, are copies of a portion of the Official Map of the Town of North Castle adopted by the Town Board on October 23, 1997 and portion of the official tax map of the Town of North Castle as of July 18, 1986.

19. At some point in time prior to 1973 Oregon Road became a public highway by virtue of its having been used as a public highway for a period of 10 years.

20. In or about 1990 the Town Board of the Town of North Castle purportedly closed a portion of Oregon Road pursuant to Highway Law § 205 as it was no longer used for public travel.

21. The said portion of Oregon Road referred to herein that was purportedly closed and that is referred to on Exhibit "A" "ends" at its southerly terminus, at the portion of Oregon Road, a legally opened public street, that has been improved and paved.

22. Upon information and belief, The Town of North Castle caused at some point in time to be erected and thereafter maintained a barrier on Oregon Road at or near the point designated as "Pole 40" and where the road abuts the public portion of Oregon Road, a barrier consisting of a gate and/or metal guide rail (the "Gate") thereby partially blocking and obstructing access to or from Oregon Road to the south by persons in vehicles and depriving

) Plaintiff, Plaintiff's visitors, trades people and vehicles and the like their lawful right to pass unimpeded over the road and to have ingress and egress over the road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

23. Plaintiff has sought to develop the Seven Springs Parcel, and in connection with the development submitted various plans and proposals to the Planning Board of The Town of North Castle and to the Planning Board of the Town of Bedford.

24. In order to develop the Seven Springs Parcel pursuant to certain plans and proposals the Town of Bedford Planning Board has required, among other things, that Plaintiff have secondary access to the Seven Springs Parcel.

25. That the Defendants have taken, and continue to take, the position that Plaintiff has no right to access the Seven Springs Parcel from the south over Oregon Road.

) 26. That the Defendants continue to unlawfully and wrongfully deprive Plaintiff of its right to access the Seven Springs Parcel, and to hinder, delay and/or preclude development of the Seven Springs Parcel.

27. Upon information and belief, said Defendants' acts are willful, without reasonable or probable cause and are without basis in law or fact.

28. That the injuries complained of are consistent and continuous and Plaintiff has suffered and will suffer injury, which injury will be continuous, and that to obtain any redress the Plaintiff will necessarily be involved in continued litigation with the Defendants and will suffer continuing damages.

) 29. That on or about February 13, 2008 a Decision was issued by the Appellate Division, Second Department in the matter entitled Seven Springs, LLC v. The Nature Conservancy, et al., (NYAD 2d Dept, 48 AD3d 545).

30. That the Decision provides in pertinent part that "the abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished. (Citations omitted)". That by reason of the foregoing Decision it has been judicially determined that the Town of North Castle never extinguished the Easement pursuant to Highway Law § 205.

31. On or about June 12, 2006 title to the property, which is adjacent to the easterly boundary line of the Burke and Donohoe properties, referred to above, to the center line of Oregon Road, was transferred from Realis Associates to Seven Springs by deed dated June 12, 2006 and recorded in the Westchester County Clerk's office on March 17, 2008 in Control Number 480640315. The deed from Realis Associates to Seven Springs specifically provides, among other things, that "the premises being conveyed are, and are intended to be, the same premises retained by the party of the first part as set forth in deed from Realis Associates to Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in liber 10576 page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 8, 1994 in liber 10929 page 35".

32. By reason of the foregoing, the Town of North Castle has no legal interest in and to the private use of the Easement Area by the private persons entitled to the benefits of the Easement, no claim to public use of the Easement Area or any claim of any kind or nature with regard to the Easement, no basis in law or fact to advance any claim with regard to the Easement and use of the Easement Area by the Town of North Castle, in its capacity as a municipal corporation, or by residents of the Town or the public generally, and Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe have no valid basis,

in law or fact, to maintain the Gate or any other obstruction and/or barrier on or over Oregon Road, or prevent, or attempt to prevent, Plaintiff from having unobstructed access to the Seven Springs Parcel over Oregon Road.

33. Based upon the foregoing, Defendants Burke and Donohoe have no right, title or interest in, or to, Oregon Road and/or the Easement Area.

34. By reason of the foregoing, the Defendants have no fee interest in, or right of use over, that portion of the said allegedly closed portion of Oregon Road as described above, or the Easement Area, to the exclusion of Plaintiff's right, title and interest in and to Oregon Road or the Easement Area.

35. As a result of the actions of Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe, Plaintiff has been, and will in the future be, deprived of the full use and enjoyment of the Seven Springs Parcel, and the value of the Seven Springs Parcel has been greatly diminished, and Plaintiff has suffered and will in the future suffer damages thereby.

36. By virtue of the foregoing Plaintiff has been damaged in an amount to be determined at trial but not less than \$30,000,000.00.

37. By virtue of Defendants' unlawful, improper and intentional acts, Plaintiff should be awarded punitive damages in an amount to be determined at trial but not less than \$30,000,000.00.

WHEREFORE, Plaintiff demands judgment:

(a) That Plaintiff have Judgment for damages against Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe, individually and

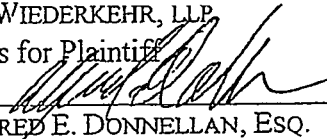
) severally, an amount to be determined at trial but not less than \$30,000,000.00, with interest thereon and attorneys fees, for the injuries suffered as herein alleged.

(b) That Plaintiff have Judgment for punitive damages against Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe in an amount to be determined at trial but not less than the amount of \$30,000,000.00, with interest thereon.

(c) That the Plaintiff have such other, further and different relief as to the Court may seem just, equitable and proper, together with the costs and disbursements of this action.

Dated: White Plains, New York
September 22, 2009

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff


By: ALFRED E. DONNELLAN, ESQ.
BRADLEY D. WANK, ESQ.

One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and JOANN
DONOHOE,

Defendants.
-----X

Index No. 21162/09
Date Filed:

**AMENDED
COMPLAINT**

Plaintiff, Seven Springs, LLC, by its attorneys, DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP, for its amended complaint against defendants, The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joanne Donohoe, alleges, upon information and belief, as follows:

1. Plaintiff, Seven Springs, LLC ("Seven Springs") is a New York Limited Liability Company duly organized under the laws of the State of New York, and having a principal place of business at c/o The Trump organization, 725 Fifth Avenue, New York, New York 10022.

2. Upon information and belief, Defendant, The Nature Conservancy is a District of Columbia Corporation authorized to do business in the State of New York, and has a place of business located in the Town of North Castle, Westchester County, New York.

3. Upon information and belief, Defendants Robert Burke and Teri Burke (collectively referred to herein as "Burke") are residents of the State of New York, residing at 2 Oregon Hollow Road, Armonk, New York.

4. Upon information and belief, Defendants Noel B. Donohoe and Joann Donohoe (collectively referred to herein as "Donohoe") are residents of the State of New York, residing at 4 Oregon Hollow Road, Armonk, New York.

5. Seven Springs is the owner of a parcel of property (the "Seven Springs Parcel") comprising approximately 213 acres, and known on the tax assessment map of the Town of New Castle, County of Westchester as Section 94.17, Block 1, Lots 8 and 9, on the Tax Assessment Map of the Town of North Castle as Section 2, Block 6, Lots 1 and 2, and on the Tax Assessment Map of the Town of Bedford as Section 94.18, Block 1, Lot 1 and Section 94.14, Block 1, Lot 9.

6. The Seven Springs Parcel contains, among other things, a manor house that is approximately 90 years old. The house is the private dwelling of Donald Trump and family.

7. Seven Springs acquired title to the Seven Springs Parcel from The Rockefeller University by deed dated December 22, 1995 and recorded in the Westchester County Clerk's Office on December 28, 1995 in Liber 11325 Page 243, which deed more particularly describes the Seven Springs Parcel.

8. Rockefeller University acquired title to the Seven Springs parcel from Seven Springs Farm Center, Inc. by deed dated April 12, 1984 and recorded in the Westchester County clerk's office on May 24, 1984 in liber 7923 page 639.

9. Seven Springs Farm Center, Inc. acquired title to the Seven Springs Parcel from Yale University pursuant to deed dated March 23, 1973 and recorded March 27, 1973 in liber 7115 page 592.

10. Yale University acquired title to the Seven Springs Parcel from the Eugene and Agnes E. Meyer Foundation (the "Foundation") pursuant to deed dated January 19, 1973 and recorded in the Westchester County Clerk's office on March 27, 1973 in liber 7115, page 577.

11. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road.

12. As of 1973, and for some time prior thereto, Eugene Meyer, Jr. ("Meyer") was the owner of certain lands located in the County of Westchester and State of New York.

13. Included in these lands owned by Meyer was the Seven Springs Parcel as well as certain real property which would ultimately become the property of The Nature Conservancy (the "Nature Conservancy Property").

14. The Nature Conservancy Property and the Seven Springs Parcel were part of certain lands acquired over time by Meyer.

15. The Nature Conservancy acquired title to the Nature Conservancy Property from the Foundation by deed dated May 25, 1973 and recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

16. The Nature Conservancy Property is situated in the Towns of North Castle and New Castle, County of Westchester and is more particularly described in the aforesaid deed recorded in the Westchester County Clerk's office on May 30, 1973 in liber 7127 page 719.

17. The December 22, 1995 deed from the Rockefeller University referred to above, and the prior deeds thereto, conveyed fee simple absolute in the premises described therein together with the land lying in the bed of any streets and roads abutting the premises to the center lines thereof.

18. The Seven Springs Parcel has at all times abutted, and continues to abut, Oregon Road.

19. By reason of the foregoing and the December 22, 1995 Deed recorded in liber 11325 page 243 and the May 25, 1973 deed recorded in liber 7127 page 719, and the prior deeds thereto, and the facts herein set forth, Plaintiff has fee title in and to the one-half portion of Oregon Road, as same street/roadway abuts said property on its westerly side, and has a right of way and/or easement of no less than 50 feet in width to use that portion of Oregon Road abutting the Seven Springs Parcel, and that portion of Oregon Road, more particularly identified and highlighted (the "Easement" or "Easement Area") on Exhibit "A", southerly to and from the Seven Springs Parcel to the public portion of Oregon Road, for ingress and egress, and for pedestrian and vehicular access. Annexed hereto as Exhibit "A", and made a part hereof, are copies of a portion of the Official Map of the Town of North Castle adopted by the Town Board on October 23, 1997 and portion of the official tax map of the Town of North Castle as of July 18, 1986.

20. At some point in time prior to 1973 Oregon Road became a public highway by virtue of its having been used as a public highway for a period of 10 years.

21. In or about 1990 the Town Board of the Town of North Castle purportedly closed a portion of Oregon Road pursuant to Highway Law § 205 as it was no longer used for public travel.

22. The said portion of Oregon Road referred to herein that was purportedly closed and that is referred to on Exhibit "A" "ends" at its southerly terminus, at the portion of Oregon Road, a legally opened public street, that has been improved and paved.

23. Upon information and belief, The Town of North Castle caused at some point in time to be erected and thereafter maintained a barrier on Oregon Road at or near the point designated as "Pole 40" and where the road abuts the public portion of Oregon Road, a barrier consisting of a gate and/or metal guide rail (the "Gate") thereby partially blocking and obstructing access to or from Oregon Road to the south by persons in vehicles and depriving Plaintiff, Plaintiff's visitors, trades people and vehicles and the like their lawful right to pass unimpeded over the road and to have ingress and egress over the road to and from the Seven Springs Parcel to or from the publicly opened section of Oregon Road.

24. Plaintiff has sought to develop the Seven Springs Parcel, and in connection with the development submitted various plans and proposals to the Planning Board of The Town of North Castle and to the Planning Board of the Town of Bedford.

25. In order to develop the Seven Springs Parcel pursuant to certain plans and proposals the Town of Bedford Planning Board has required, among other things, that Plaintiff have secondary access to the Seven Springs Parcel. The only viable secondary access to the Seven Springs Parcel is from the south. The only means by which access can be had to any public highway, street, road or avenue from the Seven Springs Parcel to the south is via the road known as Oregon Road.

26. The Town of Bedford Planning Board's refusal to permit development of the entire Seven Springs Parcel would not have occurred but for the Defendants' actions.

27. That the Defendants have taken, and continue to take, the position that Plaintiff has no right to access the Seven Springs Parcel from the south over Oregon Road.

28. Upon information and belief, Defendants made statements impugning Plaintiff's title to the Seven Springs Parcel and Easement, which statements in sum and substance asserted that Plaintiff has no right, title or interest to the Easement.

29. These statements were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Plaintiff's title to the Easement, and was so understood.

30. Upon information and belief, Defendants caused said statements to be communicated and disseminated to third parties, including but not limited to, members of the Board of the Town of Bedford and members of the Board of the Town of North Castle.

31. Defendants intentionally, recklessly, or negligently, with malice, expressed or implied by law, wrongfully communicated the aforesaid statements that Plaintiff has no right, title or interest in, or to, the Easement.

32. The statements made and communicated by Defendants were and are false and untrue.

33. Upon information and belief, at the time the Defendants made and communicated said statements, Defendants had no reasonable cause to believe the statements were true, or Defendants knew the statements were false or demonstrated a reckless disregard for its truth.

34. Notwithstanding Defendants' knowledge of the falsity of the statements or reckless disregard for its truth, Defendants intentionally communicated the statements, even though Defendants knew, or should have known, that it would result in harm to Plaintiff's interest in the Seven Springs Parcel.

35. Defendants communicated the statements maliciously with the intention to injure Plaintiff.

36. That the Defendants have sought and obtained preliminary injunctive relief prohibiting Plaintiff from exercising its full rights to the Easement.

37. Plaintiff would have been able to develop the entire Seven Springs Parcel but for the Defendants' actions.

38. That the Defendants continue to unlawfully, intentionally and wrongfully deprive Plaintiff of its right to access the Easement and the Seven Springs Parcel, and to hinder, delay and/or preclude development of the Seven Springs Parcel by a system of conduct on their part, which intends to harm Plaintiff.

39. As a result of the Defendants' actions, Plaintiff, its visitors, tradespeople and the residents of the manor house are inconvenienced and deprived of the benefit of the Easement, and, more particularly are required to travel significantly greater distances to access the Seven Springs Parcel from the south.

40. Defendant's actions were (i) effected by dishonest, unfair and/or improper means; (ii) committed without reasonable justification; and/or (iii) were otherwise motivated solely by malice and ill-will to Plaintiff as they were intended to, and actually did, cause injury to Plaintiff by preventing Plaintiff from exercising its property rights over the Easement Area, by preventing Plaintiff from directly accessing the Seven Springs Parcel over Oregon Road, by preventing the development of the Seven Springs Parcel, and by preventing Plaintiff from exercising its full use and enjoyment of the Easement and Seven Springs Parcel.

41. Upon information and belief, said Defendants' acts are willful, without reasonable or probable cause and are without basis in law or fact, and disinterested malevolence is the sole motivation for Defendants' actions.

42. That the injuries complained of are consistent and continuous and Plaintiff has suffered and will suffer injury, which injury will be continuous, and that to obtain any redress the Plaintiff will necessarily be involved in continued litigation with the Defendants and will suffer continuing damages.

43. That on or about February 13, 2008 a Decision was issued by the Appellate Division, Second Department in the matter entitled Seven Springs, LLC v. The Nature Conservancy, et al., (NYAD 2d Dept, 48 AD3d 545).

44. That the Decision provides in pertinent part that "the abandonment of a public highway pursuant to Highway Law § 205 does not serve to extinguish private easements, as Highway Law § 205 does not provide for compensation to the owners of any private easements that would be extinguished. (Citations omitted)". That by reason of the foregoing Decision it has been judicially determined that the Town of North Castle never extinguished the Easement pursuant to Highway Law § 205.

45. On or about June 12, 2006 title to the property, which is adjacent to the easterly boundary line of the Burke and Donohoe properties, referred to above, to the center line of Oregon Road, was transferred from Realis Associates to Seven Springs by deed dated June 12, 2006 and recorded in the Westchester County Clerk's office on March 17, 2008 in Control Number 480640315. The deed from Realis Associates to Seven Springs specifically provides, among other things, that "the premises being conveyed are, and are intended to be, the same premises retained by the party of the first part as set forth in deed from Realis Associates to

Robert Burke and Teri Burke dated April 29, 1993 and recorded on May 12, 1993 in liber 10576 page 243, and as set forth in deed from Realis Associates to Noel B. Donohoe and Joann Donohoe dated July 27, 1994 and recorded August 8, 1994 in liber 10929 page 35".

46. By reason of the foregoing, the Town of North Castle has no legal interest in and to the private use of the Easement Area by the private persons entitled to the benefits of the Easement, no claim to public use of the Easement Area or any claim of any kind or nature with regard to the Easement, no basis in law or fact to advance any claim with regard to the Easement and use of the Easement Area by the Town of North Castle, in its capacity as a municipal corporation, or by residents of the Town or the public generally, and Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe have no valid basis, in law or fact, to maintain the Gate or any other obstruction and/or barrier on or over Oregon Road, or prevent, or attempt to prevent, Plaintiff from having unobstructed access to the Seven Springs Parcel over Oregon Road.

47. Based upon the foregoing, Defendants Burke and Donohoe have no right, title or interest in, or to, Oregon Road and/or the Easement Area.

48. By reason of the foregoing, the Defendants have no fee interest in, or right of use over, that portion of the said allegedly closed portion of Oregon Road as described above, or the Easement Area, to the exclusion of Plaintiff's right, title and interest in and to Oregon Road or the Easement Area.

49. As a result of the actions of Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe, Plaintiff has been, and will in the future be, deprived of the full use and enjoyment of the Easement and Seven Springs Parcel, and the value

) of the Seven Springs Parcel has been greatly diminished, and Plaintiff has suffered and will in the future suffer damages thereby.

50. By virtue of the foregoing Plaintiff has sustained actual and special damages in an amount to be determined at trial but not less than \$60,000,000.00, to wit:

- (a) Plaintiff's inability to use the Easement - \$5,000,000.00
- (b) Diminution in value of the Seven Springs Parcel - \$50,000,000.00
- (c) Plaintiff's inability to access the Seven Springs Parcel over Oregon Road - \$5,000,000.00

51. By virtue of Defendants' unlawful, improper and intentional acts, Plaintiff should be awarded punitive damages in an amount to be determined at trial but not less than \$30,000,000.00.

) **WHEREFORE**, Plaintiff demands judgment:

(a) That Plaintiff have Judgment for damages against Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe, individually and severally, an amount to be determined at trial but not less than \$60,000,000.00, with interest thereon and attorneys fees, for the injuries suffered as herein alleged.

(b) That Plaintiff have Judgment for punitive damages against Defendants The Nature Conservancy, Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe in an amount to be determined at trial but not less than the amount of \$30,000,000.00, with interest thereon.

(c) That the Plaintiff have such other, further and different relief as to the Court may seem just, equitable and proper, together with the costs and disbursements of this action.

Dated: White Plains, New York
January __, 2010

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Attorneys for Plaintiff

By: ALFRED E. DONNELLAN, ESQ.
BRADLEY D. WANK, ESQ.
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

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SL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

**JUDICIAL SUBPOENA
(Duces Tecum)**

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendant.
-----X

THE PEOPLE OF THE STATE OF NEW YORK

To: STEWART TITLE INSURANCE COMPANY, 707 Westchester Ave., Ste.411, White Plains,
NY 10604

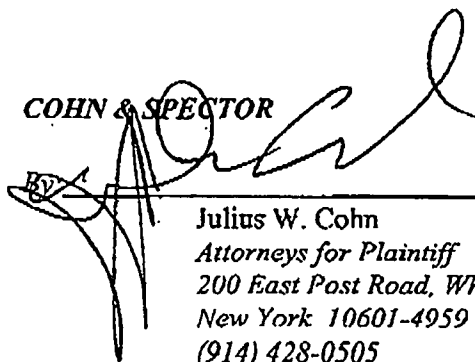
WE COMMAND YOU, that all business and excuses being laid aside, you and each of you, appear and attend before the Hon. Francis A. Nicolai, Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601 on the 2nd day of September, 2010 at 9:30 o'clock in the forenoon of that day and at any recessed or adjourned date to give testimony in this action on the part of the plaintiff concerning the circumstances of this action, and that you bring with you all documents and items contained in the attached Schedule of Items to be Produced.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

All papers or other items delivered to the Hon. Francis A. Nicolai, Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601 pursuant to this Subpoena shall be accompanied by a copy of the Subpoena.

Dated: White Plains, New York
August 12, 2010

COHN & SPECTOR

BY 

Julius W. Cohn
Attorneys for Plaintiff
200 East Post Road, White Plains
New York 10601-4959
(914) 428-0505

Copy To: Served by fax upon the following law firm pursuant to CPLR§2303-a and §2103(b)(5):
Benowich Law, LLP, 1025 Westchester Ave., White Plains, NY 10604;
Fax: 914-946-9474
Oxman, Tulis, Kirkpatrick, Wyatt & Geiger, 120 Bloomingdale Road, White Plains, NY
10601; Fax: 914-422-3636

**SCHEDULE ATTACHED TO JUDICIAL SUBPOENA DUCES TECUM
TO STEWART TITLE INSURANCE COMPANY**

The following are to be produced pursuant to the Judicial Subpoena Duces Tecum annexed hereto:

1. Stewart Title Insurance Company File No.: 06-30710-W.
2. All documents maintained by you or in your possession, custody or control:
 - I. Correspondence, memoranda and internal notes, telephone logs, emails and the like, not previously demanded or not otherwise included in File No. 06-30710-W. and furnished pursuant to this subpoena as part of item number 1 above, which material pertains or relates to property owned by either The Nature Conservancy or Seven Springs, LLC or either of said entities' predecessors in title to such property and/or relates to Oregon Road in either the Town of New Castle or the Town of North Castle including further, without limitation, abstracts of title, deeds, expressions of opinion as to the relative rights of the parties to any of such properties or any road abutting either such property and any surveys or maps either utilized, relied upon, examined and/or received in connection with the foregoing.
3. Photographs, CDs, DVDs, videos or any other digital or physical representation of any of the properties referred to in item number 2 above.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendant.
-----X

Index No.: 9130/2006

**JUDICIAL SUBPOENA
(Duces Tecum)**

THE PEOPLE OF THE STATE OF NEW YORK

To: **RG TITLE AGENCY, 1000 North Division Street, Peekskill, NY 10566**

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you, appear and attend before the Hon. Francis A. Nicolai, Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601 on the 2nd day of September, 2010 at 9:30 o'clock in the forenoon of that day and at any recessed or adjourned date to give testimony in this action on the part of the plaintiff concerning the circumstances of this action, and that you bring with you all documents and items contained in the attached Schedule of Items to be Produced.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

All papers or other items delivered to the Hon. Francis A. Nicolai, Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601 pursuant to this Subpoena shall be accompanied by a copy of the Subpoena.

Dated: *White Plains, New York
August 12, 2010*

COHN & SPECTOR

By: 

Julius W. Cohn
Attorneys for Plaintiff
200 East Post Road, White Plains
New York 10601-4959
(914) 428-0505

Copy To: Served by fax upon the following law firm pursuant to CPLR§2303-a and §2103(b)(5):
Benowich Law, LLP, 1025 Westchester Ave., White Plains, NY 10604;
Fax: 914-946-9474
Oxman, Tulis, Kirkpatrick, Wyatt & Geiger, 120 Bloomingdale Road, White Plains, NY 10601; Fax: 914-422-3636

**SCHEDULE ATTACHED TO JUDICIAL SUBPOENA DUCES TECUM
TO RG TITLE AGENCY**

The following are to be produced pursuant to the Judicial Subpoena Duces Tecum annexed hereto:

1. RG Agency File No.: A6548
2. All documents maintained by you or in your possession, custody or control:
 1. Correspondence, memoranda and internal notes, telephone logs, emails and the like not previously demanded or not otherwise included in File No. A6548 and furnished pursuant to this subpoena as part of item number 1 above, which material pertains or relates to property owned by either The Nature Conservancy or Seven Springs, LLC or either of said entities' predecessors in title to such property and/or relates to Oregon Road in either the Town of New Castle or the Town of North Castle including further, without limitation, abstracts of title, deeds, expressions of opinion as to the relative rights of the parties to any of such properties or any road abutting either such property and any surveys or maps either utilized, relied upon, examined and/or received in connection with the foregoing.
3. Photographs, CDs, DVDs, videos or any other digital or physical representation of any of the properties referred to in item number 2 above.

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White Plains Office
707 Westchester Avenue, Suite 411
White Plains, NY 10604
914-993-9393 phone
914-997-1698 fax
800-433-4698
stewartwhiteplains.com
NYSE: STC

April 27, 2006

Christopher D. Roosevelt, Esq.
Roosevelt & Benowich, LLP
1025 Westchester Avenue
White Plains, New York 10604

**RE: The Nature Conservancy ("TNC")
Seven Springs, LLC
06-30710-W**

Dear Mr. Roosevelt:

At your request, we have examined the title to the premises owned by the two referenced entities in the area of Oregon Road from Byram Lake Road running southerly to the public portion of Oregon Road in North Castle.

We have also reviewed the letter dated November 15, 2005 from Jonathan A. Richards at Fidelity National Title to Jason D. Greenblatt at the Trump Organization, and the letter dated February 16, 2006 from Stephen J. Bobolia at Fidelity Title, Ltd. to Roland Baroni, Jr., Esq.

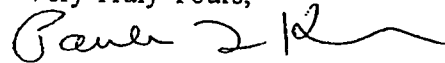
Based on our research, we are unable to conclude that Seven Springs, LLC enjoys a private easement over that portion of Oregon Road which lies within TNC's land. Under all of the circumstances, the fact that Seven Springs might enjoy a private easement over that portion of Oregon Road where it's land abuts Oregon Road is insufficient for us to conclude that Seven Springs enjoys a private easement over the portion of Oregon Road that lies within TNC's land.

Among other things, Oregon Road appears to pre-date Eugene Meyer's acquisition of the lands now owned by TNC and Seven Springs; the deeds by which both TNC and Rockefeller University acquired their lands from the Meyer Foundation refer to Oregon Road as well as to metes and bounds descriptions, and not to a subdivision map; there is no evidence that Meyer intended to or did dedicate Oregon Road to public use while at the same time creating a private easement in favor of the lands conveyed to Rockefeller University over the lands conveyed to TNC; and Seven Springs and TNC do not share a common grantor.

Even if Seven Springs' grantor (Rockefeller University) enjoyed such a private easement (and we do not believe that was the case), there is evidence that any such easement was affirmatively abandoned by Rockefeller University before the conveyance to Seven Springs.

Accordingly, we cannot conclude, and would not be willing to insure, that Seven Springs has a private easement over that portion of Oregon Road which lies within TNC's lands.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Paula-L. Klein", with a long horizontal flourish extending to the right.

Paula-L. Klein

Vice President-Senior Counsel

Certificate of Service by FedEx

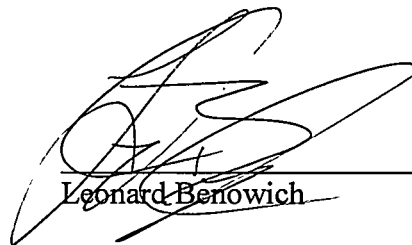
LEONARD BENOWICH, an attorney duly admitted to practice in this Court, hereby affirms, under the penalty of perjury, that on October 28, 2010, I served a true copy of the foregoing **Affidavits and Memorandum of Law In Opposition To Summary Judgment** to be served by **FedEx** upon the following counsel:

Julius W. Cohn, Esq.
Cohn & Spector
200 East Post Road
White Plains, NY 10601-4959
Attorneys for Plaintiff

Lois Rosen, Esq.
Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605
Attorneys for Defendants Burke and Donohoe

by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of **FedEx** within the State of New York, addressed to the party listed above.

Dated: White Plains, New York
October 28, 2010


Leonard Benowich

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----X
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

AFFIDAVITS IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Benowich

BENOWICH LAW, I.L.P.
1025 Westchester Avenue
White Plains, New York 10604
(914) 946-2400

Attorneys for Defendant The Nature Conservancy

To

Service of a copy of the within is hereby admitted.

Dated:.....

Attorney(s) for

.....

staple
here

staple
here



1. Place cover this side up on top of first page of document. Staple as indicated.



2. Lift bottom of cover up and over top, folding on top score line



3. Fold cover down behind papers on remaining score line.



STATE OF

COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice law,

Certification By Attorney certify that the within has been compared by me with the original and found to be a true and complete copy.
 Attorney's Affirmation state that I am

Check Applicable Box

the attorney(s) of record for
 in the within action; I have read the foregoing
 and know the contents thereof; the same is
 true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
 to those matters I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

.....
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.:

I, being duly sworn, depose and say: I am
 the foregoing in the within action: I have read
 the foregoing and know the contents thereof: the same is true to
 my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those
 matters I believe it to be true.

Check Applicable Box

- Individual Verification
- Corporate Verification

the of
 a corporation and a party in the within action; I have read the foregoing
 and know the contents thereof: and the same is true to my own knowledge,
 except as to the matters therein stated to be alleged upon information and belief. and as to those matters I believe
 it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

.....
The name signed must be printed beneath

STATE OF

COUNTY OF

ss.: (If both boxes are checked—indicate after names, type of service used.)

I, being sworn, say: I am not a party to the action, am over 18 years
 of age and reside at

On I served the within

Service By Mail by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within this State, addressed to each of the following persons at the last known address set forth after each name:
 Personal Service on Individual by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Check Applicable Box

Sworn to before me on

.....
The name signed must be printed beneath

SEAN AFG
10/28/10

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----X
SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE,
NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.
-----X

FILED
JUN - 1 2011
TIMOTHY C IDOMI
COUNTY CLERK
COUNTY OF WESTCHESTER

**DEFENDANT THE NATURE CONSERVANCY'S
MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Benowich

**BENOWICH LAW, LLP
1025 Westchester Avenue
White Plains, New York 10604
(914) 946-2400**

Attorneys for Defendant The Nature Conservancy

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

-----x

SEVEN SPRINGS, LLC,

Index No. 9130/06

Plaintiff,

-against-

THE NATURE CONSERVANCY,
REALIS ASSOCIATES, THE TOWN OF
NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHOE and
JOANN DONOHOE,

Assigned Justice
Francis A. Nicolai

Defendants.

-----x

**THE NATURE CONSERVANCY'S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Preliminary Statement

Defendant The Nature Conservancy ("TNC")¹ respectfully submits this memorandum of law in opposition to Plaintiff's motion for summary judgment.

Plaintiff's motion seeks drastic, unprecedented and unjustified relief.

Plaintiff seeks a declaration from this Court that it has an easement over an unpaved dirt hiking trail that runs through the heart of lands which Plaintiff admits are owned by TNC, and which have been used and maintained by TNC for more than 30 years as a nature preserve and sanctuary. Plaintiff seeks this Court's permission to pave over, widen and enlarge that dirt hiking trail, to open it up to vehicular traffic (its own), to put a lock (its own) on a gate (its own) at the southern end of what is commonly called

¹ Capitalized terms have the same meaning as used in the accompanying Affidavit of Frederick Werwaiss.

Oregon Road, and to deny access to any vehicle except those which it, unilaterally, deems appropriate to its own use and development of its lands. Although Plaintiff claims to have a private, non-exclusive easement, Plaintiff nevertheless implicitly asks this Court to declare that it has a 50-foot-wide exclusive easement over TNC's dirt hiking trail that would permit Plaintiff to (1) exclude TNC from the free and unfettered use of its own land, (2) exclude any other purported holders of this purported non-exclusive easement from making the same use thereof, and (3) widen and pave the existing trail to a 50-foot wide road with shoulders and other accessories which are, in Plaintiff's view, necessary only for its (and no-one else's) use of that portion of Oregon Road which is owned by TNC.

Plaintiff has no easement - not express, and not implied - over that portion of the so-called Oregon Road which is owned entirely by TNC. Plaintiff's claim - indeed the entire theory of its case - is predicated on a factual and legal impossibility: Plaintiff contends that the Yale Deed conveyed an express "easement" over Oregon Road, by virtue of the "together with" clause² contained in the Yale Deed. *But the Foundation could not have conveyed an easement in Oregon Road to anyone, because Plaintiff admits that Meyer and the Foundation owned the fee to Oregon Road and, thus, had no easement to convey!* Moreover, a stretch of Oregon Road more than 490 feet long is not even 50 feet in width. (See Affidavit of Dennis M. Lowes)

The Yale Deed, from which Plaintiff's title derives, contains no express grant of any easement. Nor does it create or convey any implied easement. Plaintiff does not claim that it "needs" this easement - because it doesn't; Plaintiff admittedly has had

² "TOGETHER with all right, title and interest, *if any*, of the Grantor in and to any streets and roads abutting the Premises to the centerlines thereof." (Emphasis added)

alternative access to and from the Seven Springs Property (to the north) since it acquired that property in 1995. Rather, Plaintiff “wants” this easement because the Town of Bedford apparently (although there is no proof) has insisted on some additional access (although not necessarily this easement) as a condition of approving Plaintiff’s proposed development plan.³

But Plaintiff’s desire simply is not enough for this Court to determine that Plaintiff acquired an easement by express grant by the Yale Deed, a deed which does not mention this easement at all. Plaintiff has failed to prove - because it cannot prove - that the Foundation donated the Yale Parcel to Yale in 1973 with any intention that Yale would have the sort of easement Plaintiff now seeks, given that the Foundation was simultaneously preparing to convey the TNC Parcel to TNC conditioned on TNC preserving the TNC Parcel in its natural state and using and maintaining that property as a nature preserve and sanctuary.

Even more significant, however, is the fact that Plaintiff concedes (as it must) that the Seven Springs Parcel has access to public streets and highways to the north – to a portion of Oregon Road which is a public road. Settled law precludes Plaintiff’s claim where, as here, access to the Seven Springs Parcel is available via another public road or street.

More than 35 years ago, in 1973, the Foundation donated approximately 197 acres of land to Yale, and approximately 230 acres to TNC. The Yale Deed contains no language creating or conveying any express easement in favor of Yale, and the Yale

³ See ¶25 of the Amended Complaint in *Seven Springs LLC v. Nature Conservancy*, 21162/09: “In order to develop the Seven Springs Parcel pursuant to certain plans and proposals the Town of Bedford Planning Board has required, among other things, that Plaintiff have secondary access to the Seven Springs Parcel.” (TNC-X-19)

Deed does not expressly provide that Yale has any easement or right of way over any of the lands which were retained by the Foundation and donated to TNC only several months later. Nor is there anything in the TNC Deed from the Foundation which even remotely suggests that TNC's title to the TNC Parcel is burdened by an easement in favor of the lands conveyed to Yale by the Yale Deed.

At the same time as it executed and delivered the TNC Deed, the Foundation also required that TNC enter into the Reverter Agreement. This Reverter Agreement makes it plain that TNC was - as it has been for more than 35 years - obligated to use the TNC Parcel solely as the "Meyer Sanctuary as a nature preserve," and in such "a way which will conserve its essential natural character." (TNC-X-4) This expressed intent is flatly inconsistent with, and precludes, Plaintiff's opportunistic attempt to convert the dirt hiking trail into a paved highway for the benefit of some proposed residential development. This is especially the case given that Plaintiff and its representatives had, for many years (while they tried to develop their land as a golf course), publicly taken the position that they had no easement over the portion of the so-called Oregon Road which is owned by TNC. Plaintiff is now estopped from contending in this Court that the Yale Deed - which, for years, it contended gave it no rights over TNC's land - contains an "express" grant of just such an easement.

Plaintiff has not only tried to change the facts, but it has drastically changed the theory of its case.

After Justice LaCava dismissed this case, Plaintiff appealed. The Second Department reversed and held that Plaintiff's Amended Complaint "stated" a cause of action:

. . . based upon an *implied private easement* arising in January 1973 when the Foundation conveyed to the plaintiff's predecessor in interest a parcel of land bounded by a road owned by the Foundation and used at the time as a public highway.

Seven Springs, LLC v. Nature Conservancy, 48 A.D.3d 545, 546 (2nd Dep't 2008).

Plaintiff has abandoned that cause of action; Plaintiff now argues that it has an "express" easement over TNC's land, and that such "express" easement is contained in the Yale Deed.⁴

Having changed the theory of its case, Plaintiff should be deemed to have abandoned the cause of action described by the Appellate Division, and this Court should preclude Plaintiff from arguing (either in its reply or otherwise) that it has an implied private easement. Plaintiff, having charted its own course, should not be permitted to change course yet again, simply because it may be unhappy with where that course will lead.

Plaintiff's motion should be denied and summary judgment should be entered in favor of Defendants. CPLR 3212(b). This Court has the authority to award summary judgment to a nonmoving party with respect to an issue that is the subject of the motion before the Court. *Pope v. Safety and Quality Plus, Inc.*, 74 A.D.3d 1040 (2nd Dep't 2010). Because this is a declaratory judgment action, this Court should enter judgment declaring that Plaintiff has no easement in, to or over any portion of the so-called Oregon Road which is owned entirely by TNC. *315 Main Street Poughkeepsie, LLC v. WA 319 Main, LLC*, 62 A.D.3d 690 (2nd Dep't 2009).

⁴ Of course, if (and to the extent) Plaintiff argued to the Appellate Division that it had an express easement, that argument was rejected.

The accompanying affidavit of Paula Klein, from Stewart Title, establishes that Plaintiff has no easement over that portion of Oregon Road which is owned by TNC (Klein Aff., ¶6), no easement is contained in the Yale Deed or any subsequent deed in Plaintiff's chain of title and even a conveyance of fee title to the centerline of the so-called Oregon Road does not constitute a grant of an easement over the lands owned entirely by TNC. (*Id.*, ¶7, 8)

The accompanying affidavit of Dennis M. Lowes, a surveyor, establishes that a stretch of Oregon Road running at least 490 feet is not even 50-feet wide measured from the inside of the stone walls which run along the sides of Oregon Road.

Alternatively, the motion should be held in abeyance until Defendants have had the opportunity to take Plaintiff's deposition.

Summary of Argument

1. Plaintiff does not have an *express* easement over any portion of Oregon Road that is owned by TNC. Plaintiff's reliance on the "together with" language in the Yale Deed, as well as the decision in *Coleman v. Village of Head of Harbor*, 163 A.D.2d 456 (2nd Dep't 1990), is misplaced. (*See* Point I)

2. Plaintiff does not have an *implied* easement over any portion of Oregon Road that is owned by TNC. As the Appellate Division stated, plaintiff's Amended Complaint stated a cause of action for "an implied private easement," *Seven Springs, supra*, 48 A.D.3d, at 546 (emphasis added). But Plaintiff has abandoned that argument and it has offered no evidence - because there is no evidence - that Oregon Road was a public street or highway in 1973 at the time of the Yale Deed. Moreover, Plaintiff concedes that the Seven Springs Parcel always has had access to public roads or streets to

the north, via a public portion of Oregon Road; the Seven Springs Parcel is not landlocked or deprived of access to the public system of streets or roads absent an easement over TNC's lands. Absent such proof, Plaintiff's claim for an implied easement fails. (*See* Point II)

3. As Plaintiff admitted in its Main Brief in the Appellate Division, whether a party has an easement is a question of intent, a question of fact to be determined by all of the circumstances surrounding the purported grant of such easement. (TNC-X-5) Plaintiff (whose motion does not consider any such surrounding circumstances, and contends that no such circumstances can be considered) has the burden of proving such an easement by clear and convincing evidence. It cannot do so. (*See* Points I(A), II)

4. Even assuming, *arguendo*, Plaintiff's predecessors-in-interest, Yale and/or Rockefeller, had an easement over the subject portion of Oregon Road, Rockefeller (a) abandoned that easement when it consented to the Town's closing of Oregon Road and installation of the locked Gate, (b) acknowledged that it had access to and from its property over the northern portion of Oregon Road, and (c) never used the subject portion of Oregon Road and never even asked the Town for the key to the locked Gate. (*See* Point III)

5. Even assuming, *arguendo*, Plaintiff had an easement over the subject portion of Oregon Road when it bought the Seven Springs Parcel, and even assuming Rockefeller had not abandoned that easement, Plaintiff's claim is time-barred because this action was commenced more than 16 years after the Gate was installed, and more than 10 years after Plaintiff acquired the Seven Springs Parcel. The statute of limitations

on Plaintiff's claim for a declaration that it has an easement over the subject portion of Oregon Road expired long ago. CPLR §212(a). (See Point IV)

6. Even if Plaintiff has an easement and even if its claim is not time-barred, the nature and extent of the easement Plaintiff seeks on this motion is inconsistent with the very nature and scope of the easement it claims to have. Plaintiff (and its title experts) contends it would have a private, non-exclusive easement over that portion of Oregon Road which is owned by TNC. But Plaintiff intends to use any easement declared by this Court as an exclusive easement: excluding both TNC and any other holder of such "non-exclusive" easement. (See Points V, VI)

ARGUMENT

Point I

PLAINTIFF DOES NOT HAVE AN EXPRESS EASEMENT OVER ANY PORTION OF OREGON ROAD THAT IS OWNED BY TNC

Plaintiff contends it received an easement by "express" grant over the portion of Oregon Road which is owned by TNC and within the TNC Parcel. Plaintiff argues that it has an "express" easement by virtue of the "together with" language contained in the Yale Deed.

A. The Legal Standard

Plaintiff has the burden of proving its easement by clear and convincing evidence. *Tarolli v. Westvale Genesee, Inc.*, 6 N.Y.2d 32, 34 (1959); *Joy Builders, Inc. v. Shapiro*, 57 A.D.3d 486 (2nd Dep't 2008); *Asche v. Land and Bldg. Known as 64-29 232nd Street*, 12 A.D.3d 386 (2nd Dep't 2004). Plaintiff has woefully failed to meet this burden.

“To create an easement by express grant there must be a writing containing plain and direct language evincing the grantor’s intent to create a right in the nature of an easement,” and “[t]he writing must establish unequivocally the grantor’s intent to give for all time to come a use of the servient estate to the dominant estate.” *Willow Tex, Inc. v. Dimacopoulos*, 68 N.Y.2d 963, 965 (1986); *Honeyman Point Beach Ass’n, Ltd. v. Schiff*, 64 A.D.3d 681 (2nd Dep’t 2009).

The existence of an express easement “depends upon the language of the instrument itself.” *Barra v. Norfolk Southern Ry. Co.*, 75 A.D.3d 821 (3rd Dep’t 2010). “Express easements are governed by the intent of the parties.” *Guzzone v. Brandariz*, 57 A.D.3d 481 (2nd Dep’t 2008), *citing Lewis v. Young*, 92 N.Y.2d 443, 449 (1998).

In light of the foregoing, Plaintiff has no express easement because there is no language in Plaintiff’s deed – or in the deeds of any of its predecessors – granting any such easement, as required by the Court of Appeals in *Willow Tex*.

B. Plaintiff has no Easement - Because the Foundation had no Easement

Plaintiff’s claim of an express easement is wrong for several reasons.

First, Plaintiff can only claim an easement if and to the extent that its predecessors-in-title possessed such an easement. In this case, the Foundation did not grant an easement over any portion of Oregon Road because it did not have any such interest. Plaintiff admits that Meyer (and therefore the Foundation) had acquired fee title to the roadbed of Oregon Road. Any prior easements over the subject portion of Oregon Road (which may have been held by Meyer’s various predecessors) were extinguished by merger when Meyer acquired all of the fee interests. *Simone v. Heidelberg*, 9 N.Y.3d 177, 181 (2007) (“[h]ere, the easement was extinguished when the common owners, the

Accardos, acquired title to both parcels”). Once an easement has been extinguished, it “may be re-created in a subsequent conveyance *only if there is language evincing the encumbrance in a deed recorded in the servient estate’s chain of title.*” *Id.*, 9 N.Y.3d at 181 (emphasis added). An easement extinguished by merger “does not, thereafter, arise upon the severance of ownership” of the dominant and servient estates. 5 WARREN’S WEED, NEW YORK REAL PROPERTY, Easements, §40.65, at p. 40-86 (5th Ed.).

Neither Meyer nor the Foundation had an “easement” over Oregon Road - precisely because Meyer owned that land in fee. *Id.*; *Will v. Gates*, 89 N.Y.2d 778, 784 (1997). When the Foundation executed the Yale Deed in January 1973 and conveyed the property described therein to Yale, “TOGETHER with all right, title and *interest, if any, of the Grantor* in and to any streets and roads abutting the Premises to the centerlines thereof,” the Foundation’s “interest” in Oregon Road was a fee interest and not an easement. Accordingly, the Foundation did not (and could not) convey an easement in or over Oregon Road because it did not then possess an easement in or over Oregon Road. *See Starcic v. Hardy*, 31 A.D.3d 630 (2nd Dep’t 2006)(“[t]he easement at issue in this case was not, and could not have been, granted in the deed from the plaintiff’s immediate predecessor to the plaintiff, because that deed could not unilaterally create an easement over the defendant’s property where none existed previously”).

Second, Plaintiff’s hyperbolic reliance on *Coleman* is also wrong.

In *Coleman*, the Second Department held that, in that case, the “together with” language “constitutes an express grant of a private easement over the subject road” – *i.e.* Shep Jones Lane – because that was the interest that the grantor had! The Second Department did not hold that the “together with” phrase is – in all cases – sufficient to

create an express easement.⁵ Rather, that Court held only that the grantor in that case, Coleman, had conveyed *his* interest – if any, and whatever that interest might have been – in Shep Jones Lane; and it recognized that Coleman’s interest in that case was an easement - not, as in this case, a fee interest.

In *Coleman*, the plaintiff’s predecessor-in-interest had been the owner of certain land, approximately 4 acres, which lay at the northern end of a road known as “Shep Jones Lane” and which land was largely underwater at the edge of Stony Brook Harbor. The property conveyed by Coleman to the defendant in that case (which, coincidentally, was the Nature Conservancy) was quitclaimed and comprised that 4-acre parcel, together with Coleman’s “‘right, title and interest, if any . . . in and to any streets abutting’ the lands sold” to the Nature Conservancy. The Record on Appeal in that case shows that the private easement claimed by the Nature Conservancy was the only means of ingress and egress to the conveyed parcel and was, thus, a necessity for access to the conveyed property.⁶

The Second Department recognized that Coleman’s predecessor-in-title had “dedicated the subject road to the Town of Smithtown . . . for highway purposes in

⁵ The *Coleman* decision did not rely on an established rule of law, and it did not make a new rule of law or construction. Indeed, *Coleman* has never been cited by any court as support for the argument advanced in this case. “That which has never been declared to be the law is usually not the law, particularly in the ancient and often worked over field of real property law.” *Antonopoulos v. Postal Telegraph Cable Co.*, 261 App. Div. 564, 567 (2nd Dep’t 1941).

⁶ The Record on Appeal in *Coleman* reveals that “Shep Jones Lane is [TNC’s] sole means of legal access” to the conveyed property. (Letter dated January 31, 1989, appearing at page 66 of the Record on Appeal in *Coleman*.) (A copy of that letter is annexed hereto as **Exhibit 1**.) This Court may take judicial notice of that letter. *Lane v. Lane*, 68 A.D.3d 995 (2nd Dep’t 2009); *Musick v. 330 Wythe Ave. Associates, LLC*, 41 A.D.3d 675 (2nd Dep’t 2007).

1903.” By reason of that dedication, Coleman held, at most, a non-exclusive easement over Shep Jones Lane to Stony Brook Harbor.

Moreover, in *Coleman*, the Second Department also pointed out that the road was shown on a map which the grantor had provided to the grantee at the time of the conveyance in that case. By contrast, the Yale Deed does not refer to any map, and there is no evidence that any map had been delivered at the time of the Yale Deed. At most, the Foundation had a survey prepared – a survey which was not delivered to Yale, was not referred to in the Yale Deed and was not filed with the County Clerk.

Third, the “together with” language – which is at the core of Plaintiff’s argument on this motion – does not itself create an “express” easement or interest in land. Rather, this language only serves to convey whatever interest, if any, the grantor had in the subject road or street; it does not create an easement or other interest in any street or road, *Strand v. Brudnicki*, 200 A.D.2d 735 (2nd Dep’t 1994); see *Margolin v. Gatto*, 70 A.D.3d 1014 (2nd Dep’t 2010), and it is only effective to convey to a grantee any express easement that previously had been granted to the grantor, as shown by prior deeds. *Sam Development, LLC v. Dean*, 292 A.D.2d 585 (2nd Dep’t 2002).

Because Plaintiff cannot establish that the Foundation had or conveyed to Yale an easement in or over any portion of Oregon Road, its reliance on the “together with” language in the Yale Deed is insufficient to create or establish an easement over any land. An easement “may be re-created in a subsequent conveyance *only if there is language evincing the encumbrance in a deed recorded in the servient estate’s chain of title.*” *Simone*, 9 N.Y.3d at 181 (emphasis added); *Witter v. Taggart*, 78 N.Y.2d 234, 240 (1991).

Fourth, absent notice of any such easement in the TNC Deed, there simply is not, and cannot be, an easement over any part of the TNC Parcel. *Simone*, 9 N.Y.3d at 181, citing *Witter*, 78 N.Y.2d at 240; *Puchalski v. Wedemeyer*, 185 A.D.2d 563 (3rd Dep't 1992) (“[i]n the absence of actual notice before or at the time of . . . purchase or of other exceptional circumstances, an owner of land is only bound by restrictions if they appear in some deed of record in the conveyance to [that owner] or [that owner’s] direct predecessors in title’,” “[i]t is not enough if the encumbrance is recorded in the chain of title of the dominant estate; it must be found in the servient estate’s chain of title for that landowner to be bound”) (brackets in original)(emphasis added); see also *Farrell v. Sitaras*, 22 A.D.3d 518 (2nd Dep’t 2005).

Accordingly, at most, Plaintiff has title to the centerline of that portion of Oregon Road which abuts the land actually and expressly conveyed by the Foundation to Yale in the Yale Deed; but such conveyance is insufficient to constitute the grant of an express easement over any other land, and certainly not over the subject portion of Oregon Road which was then owned by the Foundation and conveyed to TNC in the TNC Deed.

C. The Title Company Letters are Inadmissible and/or Do not Support Plaintiff’s Argument

Plaintiff also contends that its position is supported by letters from various title companies. Initially, to the extent it claims to have an express easement, Plaintiff is precluded, under the decision in *Coleman* itself, from offering or relying on parole evidence.

In any event, Plaintiff’s reliance on these letters from title companies is flawed because none of the letters is anything more than a statement of a legal opinion, and none is entitled to be treated as *prima facie* evidence of anything. Indeed, Plaintiff itself

argues that parole evidence – and these letters are undoubtedly parole evidence – is inadmissible in this context. (Pltf’s Mem., at 5)

CPLR 4523 provides that:

A search affecting real property, when made and certified to by a title insurance, abstract or searching company, organized under the laws of the state, may be used in place of, and with the same legal effect as, an official search.

A review of each of the letters reveals that they purport to be little more than legal opinions and are based on facts – including but not limited to the fact that Oregon Road is or was a public street or highway – which Plaintiff has not even attempted to establish on this motion.

1. *Fidelity National Title Insurance Company*: Letter dated November 15, 2005 (PX-X). This letter is neither certified nor a title search; it appears to have been written as a commitment that the company would insure Plaintiff that it has a *non-exclusive private easement* over that portion of Oregon Road owned entirely by TNC. Of course, there is no indication that Seven Springs ever purchased that title insurance; and that company’s subsequent letter, dated August 15, 2006 – after this action was commenced – states precisely that the company would not issue insurance.

2. *Fidelity Title, Ltd., agent for LandAmerica Commonwealth*: Letter dated February 16, 2006 (PX-W). This letter does not even pretend to be a certified search; the letter states it is an “opinion of title.” To the extent this letter bears on the issues in this case, it is expressly a legal opinion: After ascertaining that Meyer owned all of Oregon Road, the author states “it is my opinion in accordance with case law, [that] Seven

Springs, LLC does have a private easement for access over the abandoned portion of Oregon Road.”⁸

3. *Fidelity National Title Insurance Company of New York*: Letter dated August 15, 2006 (PX-V). This letter is an un-certified report prepared for this litigation. A title report or an examination of title is not a search within the meaning of CPLR 4523. *Pines v. Consolidated Briarwood Estates*, 106 Misc. 450 (Sup. Ct. Queens Co. 1916);

⁸ The cases cited in this letter, however, actually support TNC’s position in this case - that Plaintiff has no easement over the portion of Oregon Road that is owned by TNC. *In Dwornick v. State*, 251 App. Div. 675, 676 (4th Dep’t 1937), *aff’d* 283 N.Y. 597 (1940), the Appellate Division clarified that the very doctrine on which Plaintiff’s title companies appear to rely is inapplicable in this case:

Claimants made proof that Amherst and Thompson streets have existed, in their present location, for something like seventy-five years. But they have overlooked the fact that the so-called ‘ancient street’ doctrine is not based upon the fact that the streets have existed for a long period of time. *The doctrine is invoked when it appears that a common grantor, owning the land comprising the street in question, as well as the lot in question and also other lots, has given deeds to lots, bounding them by the street, thereby not only dedicating the street to public use, but also, at the same time, creating private easements, in the street, which cannot be taken away without compensation.*[Emphasis added.]

Many of these essential elements are absent in this case: the Yale Parcel was not conveyed by reference to a map or to a lot bounded by a street, *see e.g. Low v. Humble Oil & Refining Co.*, 51 Misc. 2d 281, 284 (Sup. Ct. Broome Co.), *aff’d*, 27 A.D.2d 629 (3rd Dep’t 1966) (also cited in this letter); it was not conveyed as being bounded by a street, Oregon Road, but, rather (as the letters acknowledge), it was conveyed by seven pages of meticulous and lengthy metes and bounds descriptions. In addition, there is no evidence or claim that Oregon Road had been “laid out” by Meyer or the Foundation, as would be required, *Low v. Humble Oil & Refining Co.*, 31 A.D.2d 676, 295 N.Y.S.2d 859 (3rd Dep’t 1968): “Both the lot and street [had to have been] owned And laid out by a common grantor,” *id.*; there is nothing in the Yale Deed or otherwise that can be said to “dedicat[e] the street [Oregon Road] to public use;” and there is no creation of a private easement - precisely because the Foundation only conveyed its interest, if any, in the land. *Dwornick, supra*; *Low, supra*.

24C CARMODY-WAIT 2d §148:146, *Title searches or abstracts for real property* (May 2010 Ed.). This letter, too, acknowledges that Meyer acquired title to the bed of Oregon Road. Accordingly, this letter necessarily concedes that any easement Meyer had acquired in Oregon Road, by virtue of the “together with” language contained in the various deeds by which he acquired his title, means that any such easement was extinguished by merger. *See Simone, supra*. The letter then states – without any authority and without referring to any language in any deed – that “this Company concluded that Seven Springs enjoys a *non-exclusive private easement* as it abuts the property it owns as well as over the lands owned by [TNC] and others to the public portion of Oregon Road to the south.” (PX-V, at 3) Finally, the letter itself indicates that it is unreliable: Fidelity limited its liability to \$5,000.00, and expressly stated that “no policy of title insurance can be issued based upon the information contained in this Certificate.” *Id.*

Plaintiff’s offer of years’-old letters is wholly insufficient to support its claim of an express easement. The letters are no more than conclusions and hearsay, and they are not entitled to any evidentiary weight whatsoever. By contrast, TNC’s opposition to this motion is supported by a contemporaneous certification by Stewart Title which establishes that Plaintiff does not have any easement over TNC’s land. *See Klein Affidavit.*

Plaintiff’s motion should be denied and this Court should declare that Plaintiff has no easement over any portion of the so-called Oregon Road which is owned by TNC.

Point II

PLAINTIFF DOES NOT HAVE AN IMPLIED EASEMENT OVER ANY PORTION OF OREGON ROAD THAT IS OWNED BY TNC

Plaintiff does not claim to have an “implied” easement of any kind, because it cannot satisfy the elements of the cause of action identified by the Appellate Division on the prior appeal in this case. The Appellate Division held that:

. . . based upon an *implied private easement* arising in January 1973 when the Foundation conveyed to the plaintiff's predecessor in interest a parcel of land bounded by a road owned by the Foundation and used at the time as a public highway.

Seven Springs, 48 A.D.3d, at 546.

As Plaintiff acknowledged in its Main Brief submitted to the Appellate Division, “[w]hen there is a claim of an easement by implication, it generally raises a question of the intent of the parties to be determined in light of all the circumstances.” (TNC-X-15, at 22) *Joy Builders, Inc.*, *supra*; *H.S. Farrell, Inc. v. Formica Const. Co., Inc.*, 41 A.D.3d 652 (2nd Dep’t 2007) (“the creation of the easement is dependent upon the intent of that original grantor at the time of the original conveyance”); *Michalski v. Decker*, 16 A.D.3d 469 (2nd Dep’t 2005).

By abandoning its claim for an implied easement,¹⁰ Plaintiff necessarily concedes that it cannot establish the elements of such a claim. The Court of Appeals stated in *Tarolli*, 6 N.Y.2d at 34, that “one who claims an implied easement has the burden of establishing all the facts necessary to support it, and the proof must be clear and

¹⁰ See *Honeyman Point Beach Ass’n, Ltd.*, *supra* (party is estopped from raising claim on appeal which is inconsistent with claim raised in Supreme Court).

convincing.” *Joy Builders, Inc., supra*. Moreover, implied easements are disfavored, and “the burden of proof rests with the party asserting the existence of facts necessary to create an easement by implication to prove such entitlement by clear and convincing evidence.” *Abbot v. Herring*, 97 A.D.2d 870 (3rd Dep’t 1983), *aff’d* 62 N.Y.2d 1028 (1984); *Fennica Builders, Inc. v. Hersh*, 159 A.D.2d 679 (2nd Dep’t 1990).

Plaintiff does not argue on this motion (because it cannot) that it has an implied easement over Oregon Road, or over any portion of Oregon Road owned by TNC. All of the circumstances in this case establish that the Foundation’s intent¹¹ was to make sure that the TNC Parcel was used solely as a nature preserve, the Meyer Sanctuary, as described in the contemporaneous Reverter Agreement.

But even if Plaintiff had argued that it had an implied easement – an argument it made on appeal but has now abandoned – Plaintiff could not establish any such implied easement because (a) there is no evidence that Oregon Road was, in fact, a public road or highway in 1973 at the time of the Yale Deed, and (b) the Seven Springs Parcel always has had access to public streets and roads via the northerly portion of Oregon Road.

A. Plaintiff Has not Established - and it Cannot Establish - that Oregon Road was a Public Road or Street in 1973

In order to establish that Oregon Road had been used as a public highway or street in 1973, Plaintiff would have to show that: (1) the public had used the roadway for more than ten years; and (2) that the municipality - here the Town of North Castle - had exercised dominion and control over that road. Highway Law §189. New York law

¹¹ Given that the Foundation’s conveyances to Yale and TNC were intended to be done at or about the same time (but for the preparation of the various surveys and property descriptions), they should be considered to have been made at the same time. *Bogart v. Roven*, 8 A.D.3d 600 (2nd Dep’t 2004).

requires evidence showing “acquiescence on the part of the owner in public use as a highway coupled with improvement and maintenance by the public authorities.” *Heyert v. Orange & Rockland Utilities, Inc.*, 17 N.Y.2d 352, 357 (1966); *Pirman v. Confer*, 273 N.Y. 357 (1937); *Speir v. New Utrecht*, 121 N.Y. 420, 429-430 (1890); *State of New York v. Horicon*, 46 A.D.3d 1287, 1289 n.2 (3rd Dep’t 2007) (identification of a road on a town map was insufficient; the law requires “more than intermittent use by the public and more than occasional road work by the municipality”); *Desotelle v. Town Bd.*, 301 A.D.2d 1003, 1004 (3rd Dep’t 2003); *Town of Dresden v. Voutyras*, 244 A.D.2d 779, 780 (3rd Dep’t 1997); *Salvador v. New York State DOT*, 234 A.D.2d 741, 742 (3rd Dep’t 1996).

There is no such evidence.

Even if Oregon Road had been used by the public for the necessary ten (10) years prior to the date of the Yale Deed (and neither Plaintiff nor the Town has produced any such evidence in discovery), there is no evidence that the Town ever exercised dominion and control over Oregon Road at any time prior to the Yale Deed.

B. The Seven Springs Parcel is not “land-locked” - it has Access to Public Roads to the North

Any claim that Plaintiff had an implied easement is precluded as a matter of law because it admittedly had access to public roads and streets by taking the northerly portion of Oregon Road.

Even when lots abutting a road or street are conveyed by reference to streets on filed subdivision plats or filed maps – and that is not the case here! – New York law will only imply an easement to the extent necessary to allow that otherwise “land-locked” parcel access to the public system of roads. It is a doctrine rooted in necessity. *In re Wooley Avenue*, 270 N.Y. 368 (1936); *In re East 177th Street*, 239 N.Y. 119, 131 (1924)

(“The implied easements are of necessary access and egress merely. The grantees are not to be shut off from the public streets”); *In re East 178th Street*, 188 N.Y. 581 (1907); *Reis v. City of New York*, 188 N.Y. 58 (1907); *Fennica Builders, Inc v Hersh*, 159 A.D.2d 679 (2nd Dep’t 1990) (“The language of description did not imply such an easement, since the lot in question has frontage on another existing public way”); *Foerster v. Eilers*, 60 Misc. 453 (Sup. Ct. Nassau Co. 1908), *aff’d* 140 App. Div. 893 (2nd Dep’t 1910), *aff’d* 204 N.Y. 631 (1912).

Plaintiff’s Amended Complaint, the affidavit of its principal, and the maps and surveys prepared by its own surveyors all establish that the Seven Springs Parcel had access and egress to the northern portion of Oregon Road – entirely separate and apart from the subject portion of Oregon Road. Accordingly, Plaintiff could not establish that it is entitled to an implied easement over the subject portion of Oregon Road which is wholly-owned by TNC in fee, and lies to the south of the Seven Springs Parcel.

C. The Evidence Compels the Conclusion that the Foundation Did Not Intend to Give Yale an Easement over the TNC Parcel

Even if Plaintiff could show that that Oregon Road had been a public road or street at the time of the Yale Deed, and even if it could state a claim for an implied easement, the surrounding circumstances –

1. the not-for-profit, charitable nature of the grantor and the grantees,
2. the Yale Deed,
3. the survey prepared by the Foundation at the time of (although not mentioned in) the Yale Deed,
4. the TNC Deed - which does not mention any easement in favor of Yale,

5. the survey of the TNC Parcel,
6. the Reverter Agreement, and
7. the fact that the Seven Springs Parcel had access to the public streets and road, to the north, via Oregon Road,

– all establish that the Foundation had no intention of conveying an easement over that portion of Oregon Road which was retained by the Foundation and conveyed to TNC.

As the Court of Appeals held in *Tarolli*:

One who claims an implied easement has the burden of establishing all the facts necessary to support it [citations omitted]. We do not have here the situation of a grantor subdividing his property and selling lots bounding on a street shown on his subdivision map [citations omitted]. Nor is this a case where a private right of way has been in use for many years and the surrounding circumstances show that it must have been the intent of the parties to give the grantee continued use of the passageway [citation omitted]. Merely bounding premises by a road (for purposes of description like using any other mark or monument) ‘is very different from selling by reference to a map or plat on which the grantor has laid out streets’ (*King v. Mayor of City of New York*, 102 N.Y. 172, 175, 6 N.E. 395, 396). The controlling authorities say that the claim of an easement solely by implication usually raises a question of intent to be determined in the light of all the circumstances, and that running a boundary along a road is one such circumstance only [citations omitted].

There is no evidence of any intention on the part of the Foundation to create an easement in favor of Yale over that portion of Oregon Road which was retained by the

Foundation and then conveyed by the Foundation to TNC, land which, as the Reverter Agreement establishes, was to be used by TNC solely as a nature preserve. *Busch v. Harrington*, 63 A.D.3d 1333 (3rd Dep't 2009); *Palma v. Mastroianni*, 276 A.D.2d 894 (3rd Dep't 2000) (conveyance described by metes and bounds does not create or grant an easement); *Manhattan Beach Community Group, Inc. v. Laboz*, 224 A.D.2d 394 (2nd Dep't 1996) ("In determining if there is an implied easement by grant, the main factor to be considered is the intent of the parties to the grant, taking into consideration 'the circumstances attending the transaction, the particular situation of the parties, the state of the country and the state of the thing granted'"), quoting *In re New Northern Blvd., City of New York*, 258 N.Y. 136, 147-148 (1932); *Glennon v. Mayo*, 221 A.D.2d 504 (2nd Dep't 1995).

In *Tarolli, supra*, the Court of Appeals held that where a party claims an implied easement because of a conveyance that describes the boundary of the land conveyed as bounded on one side by a private road owned by grantor, "this language of description did not require the implication of such an easement":

The claim of an easement solely by implication usually raises a question of intent to be determined in the light of all the circumstances, and that running a boundary along a road is one such circumstance only.

6 N.Y.2d at 34.

The *Tarolli* Court described two types of cases in which easements could be implied: (1) those cases in which a grantor subdivides his property and sells lots bounding on a street shown on a subdivision map; and (2) those cases in which private right of way has been in use for many years and the surrounding circumstances indicate

that the parties must have intended to give the grantee continued use of the passageway.

In each case, necessity of access or egress is present. But neither of these circumstances, nor necessity, is present in this case.

In *Fennica Builders, supra*, for example, the Second Department applied this rule of necessity and held that the plaintiff had no implied easement because (a) the reference to an abandoned street in plaintiff's deed "was merely descriptive of the boundaries" and (b) the plaintiff's parcel had "frontage on another existing public way." See also *Waldron v. Wagner Hill Ltd*, 292 A.D.2d 770, 771 (4th Dep't 2002) (implied easement denied where plaintiffs admitted "they have access to their land from that portion of Wagner Hill Road not abandoned by the Town of Bath"); *Stupnicki v Southern New York Fish and Game Ass'n, Inc.*, 41 Misc. 2d 266 (Sup. Ct. Columbia Co. 1962), *aff'd on opinion below*, 19 A.D.2d 921 (3rd Dep't 1963) ("The fact that ownership of the respective parcels can be traced back for many years to the one owner of an immense parcel of land, out of which the parcels of the parties hereto were ultimately carved, does not bring this case within the doctrine of an easement by grant or implication, as in the case of the owner of a tract who subdivides it into lots, shown on a map, with streets, etc. and then sells the lots to various parties, who buy in reliance thereon. The terms 'common grantor' and 'common source of title' are not synonymous").

Several factors in this case preclude a finding of an implied easement:

First, the Yale Deed describes the lands being conveyed to Yale by metes and bounds, courses, and references to landmarks and monuments. Even the references to Oregon Road contained in the description are not such as to imply or suggest an easement or grant over the subject portion of Oregon Road. The only reference in the Yale Deed to

that portion of Oregon Road which is purportedly involved in this case appears on pages 4-5 of the Yale Deed. That reference is as follows:

. . . to the easterly side of Oregon Road in the town of North Castle; thence northerly and westerly, along the easterly and northerly side of Oregon Road, the following *eighty-six courses and distances*: . . . [Emphasis added]

The Yale Deed does not simply describe the conveyance to Yale by the boundary of Oregon Road. Rather, the Yale Deed very particularly describes – by metes, bounds, courses and markers – the boundary line of the property being conveyed thereby. The reference to Oregon Road in the Yale Deed is merely “descriptive of the boundaries” and does not, thereby, convey an implied easement over Oregon Road, *Tarolli, supra*; *Fennica Builders, Inc.* 159 A.D.2d at 679-80, especially given that the lands conveyed in the Yale Deed had frontage on and access to another existing public way. *Id.*

Second, the Yale Deed does not refer to any map. Although the Foundation apparently had a surveyor prepare a survey of the lands it intended to convey to Yale (which survey apparently formed the basis for the metes and bounds description that is used in the Yale Deed), the lands conveyed by the Yale Deed are not described by reference to that survey; the survey is not even mentioned in the Yale Deed. Plaintiff does not even claim that this survey was delivered to Yale at the time of the Yale Deed, and the survey was not filed with the County Clerk. Moreover, that survey (TNC-X-1) does not state or indicate in any way that the grantor (the Foundation) intended to create an easement over any of the lands retained by the Foundation - including that portion of Oregon Road which the Foundation plainly was preparing to donate and convey in fee to TNC.

Accordingly, Plaintiff has not only abandoned any argument that it has an implied easement over the subject portion of Oregon Road, but there is no evidence that any such easement was intended, or created, by the Foundation.

Plaintiff's motion should be denied and this Court should declare that Plaintiff has no easement over any portion of the so-called Oregon Road which is owned by TNC.

Point III

ROCKEFELLER ABANDONED ANY EASEMENT IT MAY HAVE HAD OVER THE SUBJECT PORTION OF OREGON ROAD

Even assuming, *arguendo*, that the Foundation had granted or conveyed an easement over the subject portion of Oregon Road, Plaintiff's predecessor-in-interest, Rockefeller, affirmatively abandoned any such easement, and affirmatively represented that it had – as Plaintiff has – alternative access to another public road.

It is settled law that an easement may be extinguished by abandonment. *Gerbig v. Zumpano*, 7 N.Y.2d 327 (1960). Abandonment is established with evidence of an overt act or failure to act which carries the implication that the owner of the easement neither claims nor retains any interest in the easement. *Id.*; *Simone, supra*; *DeJong v. APhill Associates*, 121 A.D.2d 678 (2nd Dep't 1986).

For the reasons set forth herein, Rockefeller abandoned any easement it may have had over that portion of Oregon Road owned by TNC. *Welsh v. Taylor*, 134 N.Y. 450 (1892).

First, Rockefeller consented to the closing of Oregon Road by the Town in 1990, and to the Town's installation in 1990 of the locked Gate. The Town's Certificate states that Rockefeller "has consented" to the closing and "has adequate ingress and egress to

its property by alternative means.” (TNC-X-9) These statements of fact in the Town’s Certificate are *prima facie* evidence thereof. CPLR §§4518(c), 4540, 2307. *Rodriguez v. Triborough Bridge and Tunnel Authority*, 276 A.D.2d 769 (2nd Dep’t 2000); *Barcher v. Radovich*, 83 A.D.2d 689 (2nd Dep’t 1992). There is no evidence of any kind (or even any suggestion) to the contrary.

Second, Plaintiff has admitted that the Gate made the portion of Oregon Road owned by TNC “impassable to or from Oregon Road *to the south* by persons or vehicles.” (TNC-X-10, ¶41) (emphasis added).¹²

Third, after Oregon Road was closed, the Gate was locked with a key that was held by the Town, and neither Rockefeller nor Plaintiff ever asked for the key. (TNC-X-8) There is, thus, uncontroverted evidence that Rockefeller abandoned its interest, if any, in Oregon Road, when it consented to the closing, ceased using Oregon Road and never even asked for the key to the Gate which, as even Plaintiff has alleged, precluded use of that portion of Oregon Road owned by TNC. *See Janoff v. Disick*, 66 A.D.3d 963 (2nd Dep’t 2009).

Fourth, Rockefeller had, as Plaintiff still has, access to the Seven Springs Parcel by another means - by traveling Oregon Road *to the north*.

Fifth, there is no evidence that Rockefeller ever used the portion of Oregon Road owned by TNC at any time after the Gate was installed.

New York’s courts long have recognized that where, as here, a road or highway is closed, or an obstruction (such as a gate or barrier) to its use as such is installed with the knowledge and consent of the party who would otherwise be entitled to a purported

¹² This case was commenced in 2006 and is not governed by the amendments to the Real Property and Proceedings Law (L.2008, ch. 269), which were effective July 9, 2008.

easement, that party is deemed to have abandoned its interest in the easement, and the easement is extinguished. *Porter v. International Bridge Co.*, 200 N.Y. 234 (1910); *Welsh, supra*.

The erection and maintenance of something which is incompatible with the exercise of the easement, when done by or with the acquiescence of the one benefited by the easement, constitutes abandonment. *Id.*; *Zeledon v. MacGillivray*, 263 A.D.2d 904 (3rd Dep't 1999) (easement extinguished by abandonment where dominant estate was aware that the servient estate had blocked and used the easement for more than 10 years); *DeCesare v. Feldmeier*, 184 A.D.2d 220 (1st Dep't 1992); *Tremberger v. Owens*, 80 App. Div. 594 (1st Dep't 1903) (easement abandoned as a matter of law by construction of a barrier across the right-of-way; abandoned easement may not be reclaimed); *Thyhsen v. Brodsky*, 51 Misc. 2d 1023 (Sup. Ct. Monroe Co. 1966); *Empire Chevrolet, Inc. v. Lantana Holdings, Inc.*, 82 N.Y.S.2d 131 (Sup. Ct. Kings Co. 1948) (plaintiff's predecessor-in-interest built homes and a retaining wall across a right-of-way, thus abandoning same as a matter of law).

Rockefeller's abandonment of any easement over that portion of Oregon Road owned by TNC extinguished that easement as a matter of law. "Once extinguished, an easement is gone forever and cannot be revived," *Sam Development, supra, quoting Stilbell Realty Corp. v. Cullen*, 43 A.D.2d 966, 967 (2nd Dep't 1974), except it may be renewed in a subsequent conveyance of either lot if sufficient language is used to evince an intent to recreate the easement *de novo*. *Simone, supra*.

Plaintiff's motion should be denied and this Court should declare that Plaintiff has no easement over any portion of the so-called Oregon Road which is owned by TNC.

Point IV

THE AMENDED COMPLAINT IS TIME-BARRED

Plaintiff's claim is barred by the expiration of the 10-year period contained in CPLR §212(a):

Possession necessary to recover real property. An action to recover real property or its possession cannot be commenced unless the plaintiff, or its predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action.

Plaintiff acknowledges that the Gate was installed in 1990 - some 16 years before this action was commenced. Plaintiff acquired title to the Seven Springs Parcel in December 1995, more than 10 years before this action was commenced. Plaintiff's initial Complaint asserted that the Gate made the portion of Oregon Road owned by TNC "impassable." (TNC-X-10, ¶41)

This action having been commenced more than ten years after Plaintiff acquired title to the Seven Springs Parcel and more than 16 years after the Gate was installed, Plaintiff had been out of possession with respect to the claimed easement for more than ten years. This action is, thus, time-barred. *Spiegel v. Ferraro*, 73 N.Y.2d 622, 624 (1989); *Orange and Rockland Utilities, Inc. v. Philwold Estates, Inc.*, 52 N.Y.2d 253 (1981); *Ford v. Clendenin*, 215 N.Y. 10 (1915); *Reinwald v. Accardi*, 201 A.D.2d 476 (2nd Dep't 1994); *Piedra v. Vanover*, 174 A.D.2d 191 (2nd Dep't 1992); *Downes v. Peluso*, 115 A.D.2d 454 (2nd Dep't 1985).

Where, as here, the location of the subject easement is definitively located, the owner of the purported dominant estate (here, Plaintiff) must commence suit within the

10-year period. *Spiegel, supra; see Castle Associates v. Schwartz*, 63 A.D.2d 481, 486 (2nd Dep't 1978).

Plaintiff's motion should be denied and this Court should declare that Plaintiff has no easement over the subject portion of Oregon Road.

Point V

**PLAINTIFF HAS NO RIGHT TO AN EASEMENT OVER
THE PORTION OF OREGON ROAD OWNED BY TNC**

Plaintiff seeks a declaration of this Court that it has "an easement in any direction over Oregon Road." (Pltf's Mem., at 10) Plaintiff, however, offers no basis in fact, and certainly no basis in law why it is entitled to an easement over that portion of Oregon Road which is owned entirely by TNC. Plaintiff appears to argue that, simply because its property abuts a portion of Oregon Road, it is therefore entitled to an easement over even the entirety of Oregon Road - even that portion which it admittedly does not abut. That is not the law of New York. *In re Wooley Avenue, supra; In re East 177th Street, supra; Fennica Builders, Inc, supra; Klein Affidavit.*

Ignoring this settled law, Plaintiff relies entirely on the Second Department's decision in *People v. Waldorf*, 168 App Div. 473 (2nd Dep't 1915). But Plaintiff's reliance on that case is disingenuous at best and intentionally misleading, at worst.

First, Plaintiff fails to advise this Court that this decision was reversed by the Court of Appeals! *People ex rel. Millbrook Co. v. Waldorf*, 217 N.Y. 96 (1916).

Second, that case is not even an easement case. Rather, in that case, the City of New Rochelle had widened North Avenue. Seeking ways to have the local property owners share some of the cost of that project, the City passed an ordinance requiring that a portion of the cost of that project be borne by owners of property that abutted North

Avenue. The property owned by one landowner had consisted of several parcels, one of which had 11.6 feet of frontage on North Avenue, and the other had no frontage on North Avenue. The Appellate Division held that the parcels were to be treated as one, and that the owner of the parcel that did not front on North Avenue nevertheless had to share in the cost of the project. The Court of Appeals reversed and held that the parcel which did not front on North Avenue was outside of the assessment district. In any event, this case simply does not hold - nor does it even suggest - that Plaintiff has “an easement in any direction” over Oregon Road simply because a portion of Seven Springs Parcel abuts a different portion of Oregon Road.

Third, Plaintiff cites to no authority holding - or even suggesting - that it has “an easement in any direction,” even over the portion of Oregon Road owned by TNC.

Plaintiff’s motion should be denied and this Court should declare that Plaintiff has no easement over the subject portion of Oregon Road.

Point VI

PLAINTIFF HAS NO RIGHT TO PAVE-OVER OREGON ROAD OR TO EXPAND OR WIDEN OREGON ROAD; PLAINTIFF’S PROPOSED USE OF OREGON ROAD IS INCONSISTENT WITH ITS CLAIM TO A PRIVATE, NON-EXCLUSIVE EASEMENT

Oregon Road is an unpaved dirt hiking trail, it is not 50-feet wide, as Plaintiff’s counsel appears to claim, and Plaintiff simply does not have the rights to use any easement in the manner which it apparently intends to do.

Plaintiff argues that it is entitled to a 50-foot wide easement, and that it is entitled to use that easement in any manner which is necessary and convenient for the purpose for which it was granted, *citing Lake Anne Homeowners Association a/k/a Lake Anne*

Estates, Inc. v. Lake Anne Realty Corp., 225 A.D.2d 736 (2nd Dep't 1996) (Pltf's Mem., at 8)

The width of Oregon Road - at the time of the Yale Deed in 1973 - is a question of fact. Although various surveys may indicate the location of Oregon Road, Plaintiff's counsel's argument notwithstanding, there is no evidence of the actual width of Oregon Road. All the evidence, in fact, is to the contrary. A long stretch of the subject portion of Oregon Road – almost half of that portion – is not 50-feet wide.

Plaintiff's premature motion for summary judgment also asks this Court to assume what Plaintiff has failed to prove, as Plaintiff has offered absolutely no evidence of the purpose for which this purported easement was, purportedly, granted. *Willow Tex, Inc., supra*; *Honeyman Point Beach Ass'n, Ltd., supra*.

The Yale Deed does not convey an express easement (because to do so it would have to have expressly granted such an easement), and it certainly does not specify that the width of any such easement is 50-feet. Even if this Court were to find an easement, where, as here, the language of the easement itself fails to specify the width of the right-of-way, the width will be construed to be that which was necessary for the use for which the purported right-of-way was created, *as of the date it was created*, considering all of the facts and circumstances existing as of that date. 49 N.Y. JUR. 2D, *Easements*, §99 (August 2010 Ed.); *Albright v. Davey*, 68 A.D.3d 1490 (3rd Dep't 2009); *Eliopoulous v. Lake George Land Conservancy, Inc.*, 50 A.D.3d 1231 (3rd Dep't 2008). Where the grant of a way specifies no limitation on the use of the way, it will necessarily be confined to the uses made at the time of its creation. *Lewis, supra*; *Guzzone, supra*.

Plaintiff has no right to enlarge Oregon Road, or any purported easement thereon.

Plaintiff has pointed to no evidence that the portion of Oregon Road now owned by TNC was used by the Foundation - or even by Yale - at the time of the Yale Deed, or thereafter. Moreover, there is no evidence that Rockefeller ever (and certainly not at any time since the Gate was installed) used or traveled over that portion of Oregon Road which was and is owned by TNC. There is, thus, no evidence of the manner of use of any purported easement.

Moreover, it is beyond question that Plaintiff's intended use of the purported easement far exceeds any purpose for which any purported easement could have been granted. Plaintiff intends to use any easement over Oregon Road for the construction of a paved, emergency roadway - one that will be for the sole benefit of Plaintiff's planned development, and one which will be locked and denied to the other holders of the non-exclusive easement. As Plaintiff stated in its Main Brief to the Appellate Division:

The plaintiff intends to improve the existing dirt road over the Easement Area with a road that is approximately 20 feet in width, which is commensurate with the paved section of Oregon Road. The road will blend in with the terrain, and it is intended for, and will be strictly limited to, use by emergency vehicles only. In addition, the road will have at its southerly terminus a gate that can only be opened and closed by an infra-red line of sight transmitter that is restricted to emergency vehicles.

(TNC-X-15).

Similarly, in its settlement with the Town of North Castle, Plaintiff secured a commitment that the Town "will support [Plaintiff's] use of Oregon Road as a *gated private road*" (PX-P, at 4 ¶III(A) (emphasis added).)

Thus, Plaintiff intends to build a gated, private road - one which serves and benefits only Plaintiff. Plainly, Plaintiff's intended use violates the very non-exclusive nature of the easement it claims to have. Plaintiff has no right to put a lock on a gate that will restrict TNC's own use of its property. *Lewis, supra*; 49 N.Y. JUR. 2D, *Easements*, §34 (August 2010 Ed.) "[t]he holder of a non-exclusive easement has no right to prohibit the servient owner's use of the land subject to the easement in any manner that does not interfere with the rights of the easement holder"). To the contrary, it is TNC that has the right to restrict Plaintiff's proposed use of any easement beyond that which this Court may find was granted by any express easement. *Id.*

Moreover, the very use to which Plaintiff "intends" to use the purported easement is inherently inconsistent with the nature of the easement claimed by Plaintiff. Plaintiff claims to have a private, non-exclusive easement. But Plaintiff intends to exclude anyone and everyone - including TNC (as well as any others who might claim to have a non-exclusive easement such as Plaintiff's) - from using that portion of Oregon Road owned by TNC.

Plaintiff's stated intention to use any purported easement over TNC's land - to the exclusion of TNC and others who might have a non-exclusive right - is evidence that Plaintiff is playing fast and loose with this Court. Plaintiff asks this Court to declare that it has certain non-exclusive rights, and then it wants to turn around and exclude (a) TNC from making full use of its own land; and (b) everyone else from enjoying their own non-exclusive easement over TNC's land.

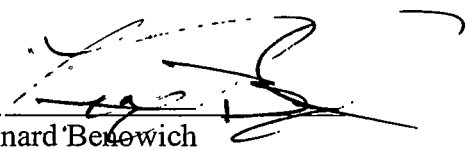
Conclusion

Plaintiff's motion for summary judgment should be denied.

This Court should grant summary judgment in favor of Defendants (CPLR 3212(b)), and declare that Plaintiff has no easement over any portion of Oregon Road which is owned by TNC.

Dated: October 26, 2010

BENOWICH LAW, LLP

By: 
Leonard Benowich
1025 Westchester Avenue
White Plains, NY 10604
(914) 946-2400

**Attorneys for Defendant
The Nature Conservancy**

Exhibit 1

EXHIBIT G: LETTER FROM THE NATURE CONSERVANCY, INC. TO EUGENE L. WISHOD DATED JANUARY 31, 1989 (PAGES 66-67)

 **The Nature Conservancy**

Eastern Regional Office
294 Washington Street, Room 740
Boston, Massachusetts 02108
(617) 542-1908

FAX (617) 482-5866

January 31, 1989

Eugene L. Wishod, Esq.
Cahn Wishod Wishod & Lamb
534 Broadhollow Road
CS 179
Melville, NY 11747

Re: Leighton Coleman v. Village of Head of the Harbor, Town of
Smithtown and The Nature Conservancy

Dear Mr. Wishod:

Thank you for executing the stipulation extending to February 27, 1989, the time for The Nature Conservancy to file an answer to your client's complaint.

Shep Jones Lane is our sole means of legal access to East Farm Preserve. Please let me know as soon as possible how you intend to provide The Nature Conservancy, its successors and assigns with permanent and continual access to the property. To that end, a draft easement, right-of-way, or other instrument running with the land may be sent to me at the above address for review.

Victor McCuaig, with whom you spoke last week, is the Chairman of our Long Island Chapter Board of Trustees. While he kindly volunteered to help us regarding the extension, we cannot continue to impose on him. Therefore, from this point on, please contact me directly on this matter.

I hope we can work this out in an amicable manner prior to any preliminary hearing. However, if I do not hear from you by February 20 regarding our right of access, I will have our attorney contact you.

Sincerely,


Joyce Kittredge
Regional Attorney
Eastern Region

Best Available COPY

JK/tv

CERTIFIED MAIL/RETURN-RECEIPT-REQUESTED

cc: Victor McCuaig, Esq.
Payne, Wood and Littlejohn
139 Glen Street

66

55

Certificate of Service by FedEx

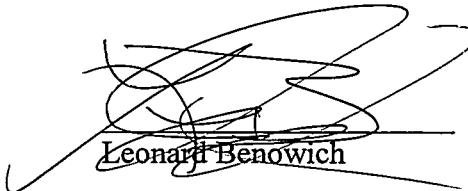
LEONARD BENOWICH, an attorney duly admitted to practice in this Court, hereby affirms, under the penalty of perjury, that on October 28, 2010, I served a true copy of the foregoing **Affidavits and Memorandum of Law In Opposition To Summary Judgment** to be served by **FedEx** upon the following counsel:

Julius W. Cohn, Esq.
Cohn & Spector
200 East Post Road
White Plains, NY 10601-4959
Attorneys for Plaintiff

Lois Rosen, Esq.
Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP
120 Bloomingdale Road
White Plains, NY 10605
Attorneys for Defendants Burke and Donohoe

by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of **FedEx** within the State of New York, addressed to the party listed above.

Dated: White Plains, New York
October 28, 2010


Leonard Benowich

SERV. AFF
12/16/18

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

**REPLY AFFIDAVIT ON
MOTION FOR SUMMARY
JUDGMENT**

FILED
JUN - 11 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

HAL GOLDMAN, being duly sworn deposes and says:

1. I am and have been the Vice President of Development for the Lower Hudson Valley Region of the Trump Organization since April 18, 2005 and am fully familiar with all of the facts and circumstances heretofore had herein. I hold a Masters of Science Degree in Urban Planning from the Columbia University School of Architecture, and since my employment by the Trump Organization my duties have included aiding in the preparation of submissions to various municipal bodies in Westchester County in connection with applications made by Seven Springs relative to the Seven Springs parcel forming the subject matter of this action. I make this Affidavit in reply and in support of the instant motion for an Order of this Court pursuant to Article 15 of the Real Property Actions and Proceedings Law and Section 3212 of the Civil Practice Law and Rules, granting judgment in favor of Plaintiff ("Seven Springs") for the relief demanded in the Amended Complaint.

FREDERICK WERWAISS IS NOT AT ALL FAMILIAR WITH THE SUBJECT MATTER OF THIS ACTION AND HIS ANSWERING AFFIDAVIT CONTAINS NUMEROUS MISLEADING AND INCORRECT STATEMENTS.

2. The Affidavit of Frederick Werwaiss (“the Werwaiss Affidavit”) sworn to October 5, 2010, submitted in opposition to the instant motion, is replete with misstatements. The reason for this may be gleaned from the information in **EXHIBIT “A”** attached hereto, which shows that The Nature Conservancy (“TNC”) first hired Mr. Werwaiss on July 29, 2010. **EXHIBIT “A”** is a printout from TNC’s press release which appears on its website (www.nature.org); Mr. Werwaiss is described as “a proven leader and fundraiser” and that his last position was with “The Albany Medical Center Foundation”. It is clear that, unless Mr. Werwaiss studied the subject controversy between the parties while he was on the payroll of the Albany Medical Center Foundation, his “familiarity” with the subject matter of this action was garnered in the 68 day period between the time he was hired by TNC and the time he swore to the Affidavit in Opposition to this motion on October 5, 2010. One could assume that the numerous misstatements in Mr. Werwaiss’ Affidavit find their genesis in the brevity of the period of his employment with TNC. The misstatements include the following:

a. At ¶4 of the Werwaiss Affidavit: “That is the cause of action that has been the heart of this litigation since its inception – Plaintiff claimed it had an *implied* easement over that portion of Oregon Road which is owned by TNC.” Mr. Werwaiss is obviously unaware that Plaintiff filed an Amended Complaint in this action on April 3, 2008 (Exhibit “A” to the principal moving papers), after the Appellate Division Decision in this action was handed down on February 13, 2008¹ (Exhibit “Y” to the

¹The same lack of familiarity cannot be stated as to Mr. Benowich. Mr. Benowich’s Memorandum of Law does not reference Plaintiff’s Amended Complaint at all. Mr. Benowich is aware of the amendment.

Amended Complaint) denying Defendants' motion to dismiss the original Complaint. The fact of the issuance of the Appellate Division Decision is pled and set forth at ¶47 of Plaintiff's Amended Complaint.

b. Mr. Werwaiss swears in ¶8 that: "over one hundred years ago Eugene Meyer, Jr. ("Meyer"), the former publisher of the *Washington Post*, began acquiring seven hundred acres of land . . . and as Plaintiff admits, Meyer acquired fee simple title to all of the lands lying under and on either side of Oregon Road. (Trump Aff., ¶4(d).)" (**Emphasis supplied**).

At the outset, at ¶8 Werwaiss misstates what he claims to be an "admission" on the part of the Plaintiff. At ¶4(d) of the Trump Affidavit referred to by Mr. Werwaiss (the Affidavit submitted with the principal papers in support of this motion), Mr. Trump stated:

"(d) By virtue of the various deeds pursuant to which Meyer acquired title to said real property, Meyer had also acquired the entire bed of Oregon Road from Sarles Road south to at least the northern border of what is now the Oregon Trails subdivision."

The above statement does not address the entire length of Oregon Road; Werwaiss misread and misquoted Mr. Trump's Affidavit.

c. At ¶9 of his Affidavit, Werwaiss "concludes" that Meyer "did not have a private easement over any portion of Oregon Road." Werwaiss sets forth no factual substantiation for this strictly legal conclusion of which, counsel advises me, Werwaiss is incompetent to testify. Additionally, he has no knowledge of who owned various portions of the entire length of Oregon Road which, as will be shown, was not entirely owned by Meyer, nor does his legal conclusion account for the fact of Meyer's creation of an easement in favor of Yale over Meyer's then retained "servient" parcel which was later conveyed to TNC in 1973.

d. As stated in the Fidelity National Title Insurance Company of New York's August 15, 2006 report and certification (Exhibit "V" to the original moving papers) on the last page thereof:

"Also, this company concluded that Seven Springs enjoys a non-exclusive private easement as it abuts the property it owns as well as over the lands owned by The Nature Conservancy and others to the public portion of Oregon Road to the south." (emphasis supplied).

In the case of Realis, it owned, withheld from Defendants Burke and Donohoe, and subsequently conveyed to Seven Springs its fee interest (in addition to its easement rights) over Oregon Road, running along the back of the Burke and Donohoe properties. In addition, the Burke and Donohoe Defendants each acquired their properties from Realis Associates, (see Exhibits "R" and "S" to Plaintiff's principal moving papers), with explicit language by their grantor (Realis) acknowledging its intention to dedicate its ownership interest in Oregon Road to the Town of North Castle along with a road widening easement "for the future widening of Oregon Road."

PLAINTIFF'S REPLY TO MISSTATEMENTS
BY THE NATURE CONSERVANCY

3. A very clear example of a gross misstatement by TNC is found at page 6 of The Nature Conservancy's ("TNC's") Memorandum in Opposition:

". . . As the Appellate Division stated, plaintiff's Amended Complaint stated a cause of action for "an implied private easement," Seven Springs, supra, 48 A.D.3d at 546 . . ."

4. Exhibit "Y" to the principal moving papers is the *Seven Springs, LLC* Appellate Division decision. It is dated February 13, 2008. Attached to the principal moving papers as Exhibit "A" is the Plaintiff's Amended Complaint. The Amended Complaint is dated April 3, 2008 and was filed April

3, 2008. The Appellate Division never considered (nor did it have before it) the Amended Complaint which did not exist when the Appellate Division handed down its February 13, 2008 Decision.

5. TNC argues (page 6 of its opposition Memorandum of Law) that there is no evidence “that Oregon Road was a public street or highway in 1973 at the time of the Yale Deed.” TNC’s counsel in its opposition Memorandum of Law in part states:

“... Plaintiff seeks a declaration . . . that it has an easement over an unpaved dirt hiking trail . . .” (opposition Memorandum of Law, page 1)

6. Also, TNC’s opposition brief pervasively refers to Oregon Road as “so-called Oregon Road” (opposition Memorandum of Law, page 5, et seq.). The above is designed to mislead the Court; Oregon Road was a real, functional road traveled by the public, regardless of whether it was a dirt road or a paved road, long before the Meyer Foundation conveyed to either Yale (in January 1973) or to TNC (in May 1973).

7. Prior to the discontinuance of the Town of North Castle as a party defendant, Roland A. Baroni, Jr., Esq., the North Castle Town Attorney, filed a September 13, 2006 Affirmation in response to the Defendants’ motion to dismiss (based upon Plaintiff’s first Complaint) (Appellate Division Record, page 327)². Mr. Baroni in part affirmed (Appellate Division Record, page 312):

“Prior to the Town of North Castle’s decision to abandon Oregon Road in or about 1980, and its subsequent closure of same in 1990, Oregon Road was used as a highway by the public since at least 1970 . . .”

²The Appellate Division Record in the appeal is incorporated herein by reference and the Court is asked to take judicial notice of its own files in that regard. Again, the Decision in that appeal is attached to the principal moving papers on this motion as Exhibit “Q”.

8. The Burke and Donohoe Defendants' attorney's Affirmation appears in the same Appellate Record (Appellate Record, page 286). In her Affirmation dated September 14, 2006, Lois N. Rosen, Esq. in part states:

“ . . . Since Oregon Road has been in existence since the mid-nineteenth century . . .

6. One of the appendices to Plaintiff's Draft Environmental Impact Statement dated April 2005 is a “Cultural Resources Survey” dated January 8, 1998 and prepared by Historical Perspectives, Inc. As set forth therein, Oregon Road was depicted on maps in 1851 (Sidney & Neff Map); in 1872 (J.B. Beers & Co. Map in the Atlas of Westchester County); in 1905 (the E. Belcher Hyde Map in the Atlas of the Rural Country District North of New York City); and in 1911 (G. W. Bromley Map in the Atlas of Westchester County, New York).”

The maps to which Ms. Rosen refers appear in the Record on Appeal in this action at pages 306, 307, 308 and 309 of the Appellate Division Record.

9. TNC's own discovery produced documentation that defeats its argument that Oregon Road was not being used for vehicular traffic. Attached herewith as **EXHIBIT “B”** is a letter dated November 18, 1988 from the Supervisor of the Town of New Castle to the Land Steward of the Meyer Nature Preserve. This was produced by TNC as part of discovery and bears TNC's Bates stamp number “TNC000247.” The letter in part reads:

“ . . . I am in the process of getting the necessary approval to shut that road to vehicular traffic except for emergency vehicles. It seems to me that only by limiting access to the road will we stop the illegal dumping. I am hopeful that this will be accomplished in the very near future.

Once the road is closed, then I believe it will be appropriate for the two towns to clean up their right-of-way. To do so earlier would, I fear, be an exercise in futility."

10. There is additional evidence which was produced by TNC in response to discovery requests. **EXHIBIT "C"** attached is a two-page communication to the North Castle Town Board signed by eleven residents residing in the area of Oregon Road. **EXHIBIT "C"** confirms the fact that Oregon Road was a functional road for vehicular traffic and "was a beautiful route to Mount Kisco," and "a beautiful road bounded on both sides by forest and meadows." **EXHIBIT "C"** bears The Nature Conservancy's Bates stamp "TNC000446 and 447."

11. In a letter dated April 13, 1989 (**EXHIBIT "D"** attached), a Vice President of the Rockefeller University (Plaintiff's immediate predecessor in title) in part wrote:

" . . . While Oregon Road is not much used, it does have occasional significant uses . . . We would not object to a less final discontinuance such as the placement of a gate at the intersection of Oregon Road with Sarles Street."

12. **EXHIBIT "D"**, discussing the upper (northern) portion of Oregon Road, demonstrates that Rockefeller University had no intention of giving up its own rights of usage in Oregon Road and did not want Oregon Road to be permanently discontinued. Again, this document (**EXHIBIT "D"**) having been produced by TNC in discovery, is yet another example of TNC's bad faith in arguing that Oregon Road had never been a real road.

13. Clearly, the road was open and was being utilized for vehicular traffic. TNC's characterization of Oregon Road as "so-called Oregon Road" as a mere "dirt-hiking trail" is one of many reprehensible tactics submitted only to mislead the Court.

14. This action is replete with additional evidence as to the nature of Oregon Road. For instance, the Town of North Castle would not have issued a "Certificate of Discontinuance" (Appellate Division Record, page 39, original in this Court's case jacket) for a mere "hiking trail."

15. Attached hereto as **EXHIBIT "E"** is an official map of the Town of North Castle, New York prepared by Frederick P. Clark Associates and Allied Map Company in October, 1971. This exhibit clearly depicts Oregon Road (highlighted in yellow). The map was compiled two years before the conveyances by the Meyer Foundation that form the subject matter of this action.

16. Most significantly, TNC has produced its own **admission** that Oregon Road was open to vehicular use. TNC made a plan for its property, which it refers to as the "Meyer Preserve", in 1979 for its fiscal year of 1980. Attached hereto as **EXHIBIT "F"** are five pages produced by TNC in discovery and Bates stamped "TNC001072", "TNC001076", "TNC001077", "TNC001082", and "TNC001095". Page "1072" is simply the title page. At page "1076" TNC wrote under "Vehicle Control":

"Oregon Road carries very little traffic . . . Parking is supplied by a main site at the southernmost point of the east parcel . . . and several dirt pull-offs at various intervals along Oregon Road. Most of these sites can accommodate two cars."
(emphasis supplied).

17. At TNC001082 under the heading "Parking", TNC wrote in describing Oregon Road:

"Parking facilities are located at the main parking site and the various pull-offs along Oregon Road." (emphasis supplied).

18. Perhaps the most important of TNC's gross and false misstatements is its characterization of the factual and legal arguments presented by Plaintiff as to the direction in which it is entitled to enforce its easement over Oregon Road. These gross mischaracterizations are found at Point V (commencing at page 29-30) of TNC's Opposition Memorandum of Law. TNC claims that Plaintiff:

“ . . . offers no basis in fact, and certainly no basis in law why it is entitled to an easement over that portion of Oregon Road which is owned entirely by TNC. Plaintiff appears to argue that, simply because its property abuts a portion of Oregon Road, it is therefore entitled to an easement over the entirety of Oregon Road - even that portion which it admittedly does not abut. That is not the law of New York.”

19. At the outset, Plaintiff has shown the factual basis as to why it is entitled to travel in any direction over Oregon Road. This is because Plaintiff's property is bounded by and abuts Oregon Road to the north, to the west and to the south – the precise locations in which Oregon Road exists and travels. Every map and survey submitted shows this to be true. Additionally, Plaintiff has never argued (as it is accused of arguing by TNC) that it has the right to travel “even that portion which it admittedly does not abut”. Nowhere has Plaintiff made such a statement. Rather, Plaintiff has explained to this Court in its principal moving papers that its property abuts Oregon Road at the southwest corner and thus, according to the language of its deed, and in accordance with the case law as explained to me by counsel demonstrates, has the right to travel in a southerly direction over that segment which abuts its southwest corner, through the segment of Oregon Road beneath that segment which is owned by TNC on both sides of the road, to its own southerly segment of Oregon Road (acquired from Realis) to the currently public portion of Oregon Road in the vicinity of Pole 40. Finally on this point, my counsel informs me that the case that explains the definition of the term “abut”, to the extent it was reversed by the New York State Court of Appeals, was not a reversal of the definition of “abutting”, which is the sole purpose for which counsel cited the case. That definition remains in effect and explains that the term “abutting” applies equally to touching a corner of a piece of property as it does to running along a side of a piece of property.

**SEVEN SPRINGS HAS NEVER ABANDONED ITS
PRIVATE EASEMENT RIGHTS TO OREGON ROAD.**

20. Seven Springs and its predecessors have never taken any action to physically obstruct or permanently eliminate or destroy its access over Oregon Road nor to relinquish its private easement rights.

21. In its efforts to persuade this Court that the Plaintiff has abandoned any private easement rights this Court might determine exist in favor of Seven Springs, TNC claims that the Plaintiff never even sought a set of keys to the gate that the Town of North Castle installed, in order to close off the general public. (TNC Opp Mem, p. 26). However, this is again, fallacious, since TNC itself, offered on its own behalf as well as well as on behalf of the Plaintiff's predecessor, to obtain the key and provide it to Rockefeller University (Plaintiff's predecessor). In 1990, The Nature Conservancy was writing to Consolidated Edison (**EXHIBIT "G"** attached hereto, furnished by TNC during discovery) indicating, among other things:

". . . we would expect Consolidated Edison to provide both Rockefeller University (Seven Springs' predecessor in title and interest) and The Nature Conservancy with keys to such gate." (**Parenthetical material inserted**).

22. Rockefeller University refused to sign a consent to the closing and discontinuance of Oregon Road. Attached herewith as **EXHIBIT "H"** is a "CONSENT AND RELEASE (OREGON ROAD CLOSING)" form proffered to Rockefeller University which Rockefeller University refused to execute. That form was produced by TNC in discovery and bears TNC's Bates stamp "TNC000437".

23. The Plaintiff never intended to abandon its private express easement rights in Oregon Road. Attached as **EXHIBIT "I"** is Plaintiff's ten page "Amended Verified Petition for Special Use

Permit” submitted to the Town of North Castle and dated June 24, 1996 (less than one year after acquiring title). In addition, **EXHIBIT “I”** shows Plaintiff’s expeditious application to “reopen” the road and that it had the required legal standing to do so. The Petition states, in pertinent part:

“G. REOPENING OF OREGON ROAD

18. In an effort to provide as many means of egress and ingress to the project as possible, the Petitioner will seek the reopening of Oregon Road and take all necessary and appropriate steps in connection therewith.”
(emphasis in body of text supplied)

24. Neither Rockefeller University nor Seven Springs, LLC ever intended to abandon their private easement rights in Oregon Road.

PRIOR CONFLICTING STATEMENTS FOR DEIS AND FEIS PURPOSES DO NOT BIND SEVEN SPRINGS AS A LANDOWNER AND DO NOT REFLECT A SURRENDER OF ANY FEE OR EASEMENT INTEREST IN OREGON ROAD.

25. When Seven Springs purchased its property, the utilization process went through various stages and for various reasons, not all of them entirely financial. Attached hereto as **EXHIBIT “J”** is a letter dated March 17, 2004 from J. Michael Cindrich, the then Mayor of the Village/Town of Mount Kisco to TNC’s Executive Director, Katie Dolan.³ In that letter Mayor Cindrich expresses his objection to the originally planned Seven Springs Golf Course, writing the following:

“ . . . As we discussed, the Village of Mount Kisco has long regarded the proposed Seven Springs Golf Course as one of the greatest threats to its drinking water supply. We are very concerned that pesticides and other chemicals in the storm water runoff from the golf course would enter the adjacent Byram Lake reservoir, which is the primary source of

³This document was provided by TNC and its two pages bear TNC’s Bates stamps “TNC000889” and “TNC000890”.

drinking water for 10,000.00 people. The prospect of clear cutting thousands of trees in the watershed area is also of great concern to our residents . . .

Our sustained efforts at opposing the governmental permits needed for the golf course seemed to have moved Donald Trump to consider the alternative of abandoning the golf course and using the land instead for a seventeen-unit residential subdivision. The large lot sizes, lack of extensive regrading and other features have convinced us that such a subdivision would have far less detrimental environmental impacts than the golf course. Trump has also agreed to consider our recommendations concerning buffer zones, limitations on pesticide use and other measures that would further reduce the residential project's impact. If he adopts these recommendations, we anticipate supporting this project."

26. In its answering papers, TNC fails to inform the Court that Plaintiff's June 1996 application to reopen the portion of Oregon Road which North Castle had purportedly discontinued, (**EXHIBIT "I"** hereto) asserted its legal status in the Amended Verified Petition. TNC is trying to bootstrap on the fact that much later, without taking into account many factors, some clearly adjudged by the people who had to consider the same to be in the public interest, influenced how Seven Springs' property was going to be developed. Seven Springs' counsel informs me (again, the Court is respectfully referred to the Reply Memorandum of Law) that any incorrect statements in a "DEIS" or "FEIS" by our engineers (not lawyers), do not constitute an abandonment or change of use of a road. I am informed by counsel that such statements are not "binding admissions" and are not controlling on the issues before this Court. "Prior public statements" as referred to in the Werwaiss Affidavit, paragraphs 48-52 represent statements made in connection with attempted developments of the property and do not control the parties' legal rights and interests in connection with the same.

TNC'S "REVERTER AGREEMENT" IS NOT CONTROLLING ON THIRD PARTIES.

27. TNC attaches as Exhibit "4" to its answering papers a "Reverter Agreement". This agreement is:

- a. Undated.
- b. Unrecorded.
- c. Not notarized.

28. I am informed by counsel that such side agreement, which is offered to vary the terms of TNC's deed, is barred by the "parol evidence rule" as explained and emphasized in our Reply Memorandum of Law. Apart from this unrecorded document not being notice to any third party, TNC argues that its "Reverter Agreement" with the Meyer Foundation would prohibit its utilization of what was then (in 1973) clearly a public road bifurcating the two distinct TNC parcels that the Meyer Foundation conveyed to it with the same right to use that road ("TOGETHER with all right, title and interest . . ." appearing in both the Yale and TNC deeds made by the Meyer Foundation). Accordingly, it is clear that the use of Oregon Road would not be a "violation" of the "Reverter Agreement" nor change the character of the usage so as to impair any TNC retention of its property.

29. Attached as **EXHIBIT "K"** is an appraisal by James Felt & Company dated November 16, 1971 addressed to the Estate of Agnes E. Meyer. This appraisal letter was written approximately two years before the conveyance to Yale in January 1973. The document demonstrates that the Meyer Foundation was clearly aware of the likelihood of development of Oregon Road and the Seven Springs property and could have included some restriction as to the use of Oregon Road or the Yale property in its deed to Yale (should the Meyer Foundation have so desired), but did not do so. The subject language reads as follows:

“1. Location Trends. We anticipate the continued development of Westchester County in the vicinity of the subject premises.”

As can be seen from a reading of the first page of the document, the appraisal consisted:

“. . . of a mansion type residence and various farm buildings on 596.55 acres of land in the vicinity of Oregon Road and Sarles Street, adjacent to the west side of Byram Lake, located in the Towns of New Castle, Bedford and North Castle, Westchester County, New York.”

The appraisal was directly referring to the Plaintiff’s subject property.

30. Again, even Realis Associates, in its conveyances to both Burke and Donohoe (defendants) explicitly acknowledged the likelihood of continued use and further development of Oregon Road (See Plaintiff’s moving papers, Exhibits “R” and “S”) by the intention to dedicate Realis’s ownership in Oregon Road to North Castle along with a road widening easement in 1993 and 1994.

RELATIVE TO DEFENDANTS’ ARGUMENT THAT THE SUMMARY JUDGMENT MOTION IS “PREMATURE”.

31. The Defendants are arguing for “more discovery”. Attached hereto, collectively, as **EXHIBIT “L”** are two letters from Seven Springs’ counsel to this Court dated August 16, 2010 and August 17, 2010, each letter in response to a letter faxed by counsel for or on behalf of one or more of the opposing Defendants. Both letters comprising **EXHIBIT “L”** deal with a request that the instant summary judgment motion “be held in abeyance” as “premature”, additional discovery being required. Such was clearly not the case as reflected in **EXHIBIT “L”**. The August 16, 2010 letter in part states the following:

“1. If counsel believes that the motion is truly “premature” . . . any such showing by defense counsel should be in affidavit form and submitted in the course of the submission of the summary judgment motion, CPLR §3212(f). Upon

such an attempted showing, mere expression that hope that discovery will reveal something helpful to the defendants is no basis for denying a summary judgment motion, Jorbel v. Kopkol, 31 A.D.3d 612, 818 N.Y.S.2d 601 (2nd Dept. 2006) . . .”

The August 16, 2010 letter goes on to demonstrate why “discovery” of title company material “is not going to address the narrow issue of law of the language in the deeds . . .”

Relative to the Defendants’ request that the summary judgment motion “be adjourned without date” since they “haven’t had an opportunity” to depose Donald J. Trump, while the summary judgment motion is supported by Mr. Trump’s Affidavit, counsel’s August 16, 2010 letter demonstrates the fallacy of such argument, stating the following (page 3, August 16, 2010 letter):

“a. The Defendants made no effort to depose Mr. Trump for upwards of three years.

b. The Defendants do not even attempt to allege here what they believe his testimony will yield that would defeat Plaintiff’s motion for summary judgment. Mere speculation is insufficient to warrant a denial of summary judgment in order to conduct further discovery.

c. Mr. Trump’s supporting Affidavit was historical in nature, citing the chain of title and various of the letters produced years ago in discovery.”

32. I am informed by counsel, and upon my own reading of the opposing Affidavits submitted, there is still no allegation or delineation of what additional discovery would elicit as evidence which would defeat the summary judgment motion.

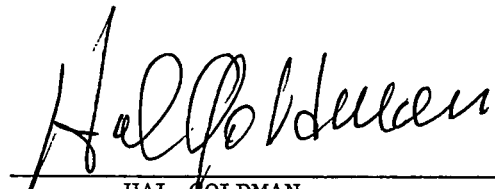
33. Attached herewith as **EXHIBIT “M”** is a portion of the minutes of the oral argument held before this Court on September 2, 2010. As can be seen from these portions of the transcript, the same

opposition as to the summary judgment motion being held "in abeyance" pending further discovery was raised before this Court and was denied. The Court ruled:


"THE COURT: It's a paper chase you don't need depositions."

34. It should be noted that during that September 2, 2010 oral argument, the Defendants advanced no particulars as to the evidence they believed discovery would yield that would aid in defeating the motion. The Defendants merely desire to engage in a "fishing expedition" and protract litigation to avoid a determination on the merits. Such position should not be condoned by this Court.

35. In addition, there has been thousands of pages of discovery material already produced by both sides in this particular litigation. As can be seen from some of the material attached as exhibits to the various motion papers, the volume is enormous; TNC's Bates stamping alone runs into the thousands.


HAL GOLDMAN

Sworn to before me this
10 day of December, 2010


Notary Public

JULIUS W. COHN
Notary Public, State of New York
No. 60-0695085
Qualified in Westchester County
Commission Expires April 30, 1997
2011

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Nature Conservancy Appoints Rick Werwaiss as Executive Director, Eastern New York Chapter

Albany, N.Y. — July 29, 2010 — The Nature Conservancy in New York has named Rick Werwaiss as the Eastern New York (ENY) Chapter's new executive director. Werwaiss has more than 20 years experience working with conservation and public interest organizations and is a proven leader and fundraiser. He has worked with National Audubon Society, Wildlife Conservation Society, American Farmland Trust and most recently the Albany Medical Center Foundation, among others.

"Rick's passion for conservation and proven fundraising record make him the right person to lead ENY," said NY State Director Bill Ulfelder. "He impressed us as a leader with vision and a deep understanding of the conservation challenges we face. These factors, coupled with his ability to build and nurture relationships with a wide range of people make him a strong leader for the chapter."

"As a long-time resident of New York, I have been inspired by the natural beauty and biodiversity of our region," said Werwaiss. "I am honored to have the opportunity to continue the important science-based conservation work that the Conservancy has been engaged in the Hudson Valley over the past years and look forward to building on this strong foundation as we work to meet significant environmental challenges locally, and around the world."

Since its founding as the Conservancy's first chartered chapter in the early 1950s, the Eastern NY Chapter has used the best conservation science combined with strong partnerships to make sensible and thoughtful decisions to protect ecologically important lands and waters for nature and people. The chapter's on-the-ground local work helps to protect the region's nationally significant biological diversity and links to global conservation issues far beyond the Hudson Valley. Protection of the region's diverse forests, rivers and freshwaters improves the quality of life by providing clean water and air, open space, and recreation opportunities.

Werwaiss, who grew up at the mouth of the Connecticut River, earned a bachelor's degree from Bates College in Maine in 1987. An outdoor enthusiast throughout his life, Rick presently lives in the view shed of the Catskills and regularly cycles the back roads of the Taconics during the warm months, when not hiking or canoeing on the Hudson River or Kinderhook creek. In the winter months, you will find him on snowshoes and skis across the Valley.

"Werwaiss is a deeply committed environmentalist with proven experience as a fundraiser, leader, and team player," said Mary Rubin, ENY board chair. "He will be a tremendous asset in connecting Conservancy members and supporters to the work of The Nature Conservancy's Eastern NY Chapter."

The Nature Conservancy is a leading conservation organization working around the world to protect ecologically important lands and waters for nature and people. The Conservancy and its more than 1 million members have protected nearly 120 million acres worldwide. [Visit The Nature Conservancy on the Web at /enywww.nature.org](http://www.nature.org).

Downloads:

None

Press Release Index:

[The Nature Conservancy in New York Press Releases](#)
[Search All Press Releases](#)

Contact Information:

Ellen Weiss
(914)244-3271 ext. 21
Email: eweiss@tnc.org

B

TOWN OF NEW CASTLE

SUPERVISOR
BRUCE GILCHRIST

DEPUTY SUPERVISOR
SLADE CARGILL

COUNCIL MEMBERS
SLADE CARGILL
MARIANNA M. KUHN
ELLIOT D. WOOCHEER
MARK S. TULIS



200 SOUTH GREELEY AVENUE
CHAPPAQUA, NEW YORK 10524

(914) 238-4771

November 18, 1988

Mr. Greg Seamon
Land Steward
Butler Sanctuary - Meyer Nature Preserve
RD #2 Chestnut Ridge Road
Mt. Kisco, New York 10549

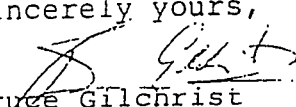
Dear Mr. Seamon:

Thank you for your letter of November 16 regarding the dumping on lower Oregon Road.

I share your concern and have been in contact over the last few months with the Supervisor of the Town of North Castle to see what might be done. With his strong support, I am in the process of getting the necessary approval to shut that road to vehicular traffic except for emergency vehicles. It seems to me that only by limiting access to the road will we stop the illegal dumping. I am hopeful that this will be accomplished in the very near future.

Once the road is closed, then I believe it will be appropriate for the two towns to clean up their rights-of-way. To do so earlier would, I fear, be an exercise in futility.

Sincerely yours,


Bruce Gilchrist
Supervisor

BG:cp

cc: Honorable John Lombardi, Supervisor
Town of North Castle
Town Board, Town of New Castle
Paul Carlucci, Chairman Conservation Board
Mrs. Richard T. Blair

TNC000247

Poor
Quality

C

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To: The North Castle Town Board

From: Residents of - 36 Oregon Rd. (KAPELMAN) M 2/23/89
- 38 Oregon Rd. (KADEN)
- 42 Oregon Rd. (KATZ) M 2/23/89
- 46 Oregon Rd. (RABINOWITZ)
- 40 Sarles St (MAYHEW)
- 29 Byram Hill Rd. (HISIGER)

We are writing to advise of a longstanding problem which must finally be properly addressed - that is the continuing use of Oregon Road between 42 Oregon Road and Sarles Street for illegal dumping.

There was a time when this Road was a beautiful route to Mount Kisco. Now, the old refrigerators, stoves, oil tanks, heaters, gardening refuse, plaster (asbestos?), shingles, engines, tiles, etc., make it a horrible eyesore and possibly a safety hazard.

This situation has been allowed to continue for years and at this time we are fearful of possible present and/or future toxic hazards, including groundwater contamination.

We must confess that we are without a definitive solution, and we have heard that the problem is complicated by the fact that Oregon Road runs through North Castle, New Castle and Bedford. Though this may not be a desirable solution, if it is the only solution, we would suggest that the Road be closed.

Again, lets remember what we are talking about - this is essentially a nature conservancy - a beautiful road bounded on both sides by forest and meadows. But the area is in danger of real contamination - visual and possibly health-wise. And so we are calling on the Town to coordinate with our neighboring towns and do what's necessary.

If we can be of help we stand ready to do so. We hope that inaction here will not continue and this situation does not result in a real stain on the Town.

TNC000446

Thank you in anticipation of your immediate attention.

Jeffrey Kapelman

Randi Kapelman

Randi Kapelman

Lewis Kaden

Lewis Kaden

Ellen Kaden

Ellen Kaden

Michael Katz

Michael Katz

Roberta Katz

Roberta Katz

Joel Rabinowitz

Joel Rabinowitz

Jane Rabinowitz

Jane Rabinowitz

Mark Mayhew

Mark Mayhew

Karen Mayhew

Karen Mayhew

James Hisiger

James Hisiger

Dale Hisiger

Dale Hisiger

cc: The Nature Conservancy
The New Castle Town Board
Bedford Town Board
Hon. John Lombardi

D



APR 14 1989

THE ROCKEFELLER UNIVERSITY

1230 YORK AVENUE • NEW YORK, NEW YORK 10021-6397

April 13, 1989

Lawrence Dittleman, Esq.
Galef & Jacobs
709 Westchester Avenue
P.O. Box 290, Gedney Station
White Plains, NY 10605-0290

Re: Town of New Castle
Proposed Closing of Oregon Road

Dear Mr. Dittleman:

Please excuse our failure to respond to your letter of March 7 sooner, but the matter proposed in that letter was of sufficient concern and import to the University to warrant the time to review it carefully.

The University does not favor accepting title to a portion of Oregon Road located in the Town of New Castle as part of a permanent discontinuance and closing of that road as proposed. While Oregon Road is not much used, it does have occasional significant uses and it may be needed for the maintenance of utility lines in the future. We would not object to a less final discontinuance such as the placement of a gate at the intersection of Oregon Road with Sarles Street.

We have discussed the matter with a representative of the Nature Conservancy, the other property owner abutting the portion of the roadway, and we believe that they are of the same mind. I am sending them a copy of this letter however, in case they wish to state some other or further word on the subject.

Very truly yours,

William H. Griesar
Vice President and
General Counsel

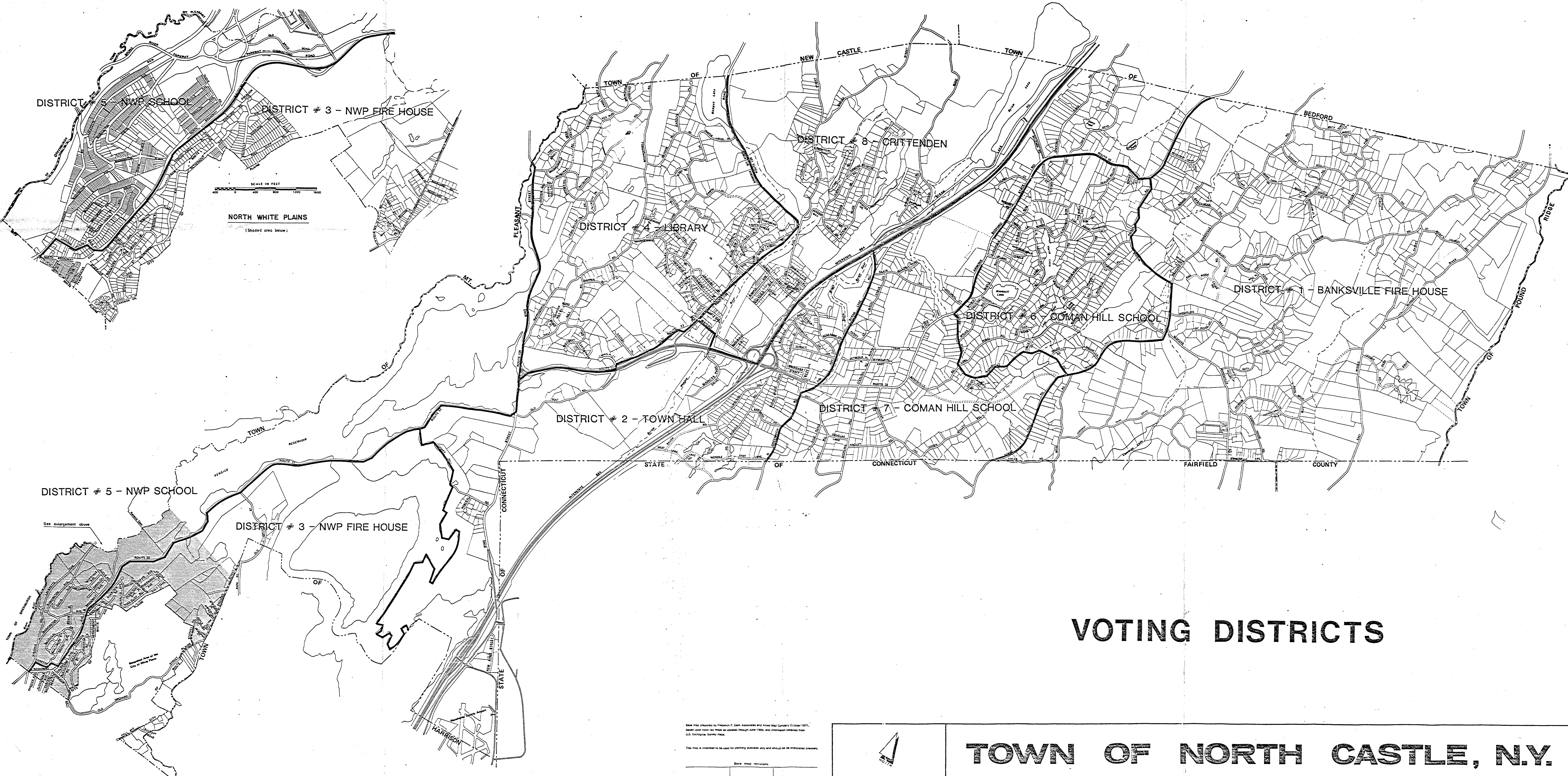
WHG:lf

cc: The Lower Hudson Chapter of The Nature Conservancy ✓
223 Katonah Avenue
Katonah, NY 10536

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Ce2

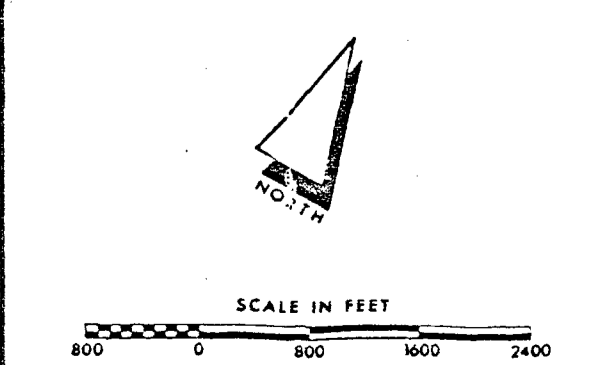


SCALE IN FEET
 0 400 800 1200 1600
NORTH WHITE PLAINS
 (Shaded area below)

DISTRICT # 5 - NWP SCHOOL
 See enlargement above
 DISTRICT # 3 - NWP FIRE HOUSE

VOTING DISTRICTS

Base map prepared by Frederick P. Clark Associates and Allied Map Company, October 1971, based upon town tax maps as updated through June 1968, and information obtained from U.S. Geological Survey maps.
 This map is intended to be used for planning purposes only and should not be interpreted as a legal document.
 Base map revisions



TOWN OF NORTH CASTLE, N.Y.

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OBJECTIVES FOR PRESERVATION
AND
PLANS FOR IMPLEMENTATION OF OBJECTIVES

developed, Mount Kisco and Meyer Foundation lands are downstream from Preserve property and so would not seriously threaten ecosystem vitality. Much of the Seven Springs property, however, is upstream of the beech-hemlock ravine. Meyer property terminates just as the ravine forms. Within Seven Springs property the ravine's stream (see figure in Appendix A) issues from a small dammed pond that is in the last stages of eutrophication. A large marsh and red maple swamp extend north. East of this wetland is the continuation of the hemlock-oak association. To the west are mowed fields. Development on slopes that drain into the swamp-marsh would result in siltation in lower areas, greater quantities of water during storms, and erosion in steeper areas downstream. These might have detrimental effects on the Preserve's ravine and the red maple-peppercorn swamp. Fortunately, the soil type of the pond-marsh area is such that it can store surface water runoff from surrounding slopes. If the slopes were developed, the marsh might effectively buffer downstream areas.

Therefore, it is recommended that the entire wetland, or at least the marsh area of the wetland, be purchased from Seven Springs Farm Center or a conservation easement be acquired. Acquisition of the hemlock-oak and field slopes would insure against development.

Vehicle Control

Oregon Road carries very little traffic. It is located in a sparsely populated area and is unpaved. Visitors to the Preserve are few. Parking is supplied by a main site at the southernmost point of the east parcel (consists of woodchip

fill into the red maple-pepperbush swamp) and several dirt pull-offs at various intervals along Oregon Road. Most of these sites can accomodate two cars.

Off-road-vehicles are a problem in the west parcel. Motorcycles, cars, and four-wheel-drive trucks enter through the 'old dump' entrance where an abandoned road enters the white pine plantation off Oregon Road, and just south of the stonewall separating the two northwesternmost fields of the west parcel off Sarles Street. The four-wheeled vehicles can be restricted by adequately blocking these entrances. The Preserve committee is investigating the type of structure to be erected. Chains, padlocks, and/or gates must be large and strong enough to hold up under tremendous amounts of abuse. Nothing short of a barrier running the entire perimeter of the Preserve will restrict motorcycles. The best control here is to catch trespassers in the act and prosecute.

Littering, dumping, and tree pirating occur along Oregon Road. Here again, it is difficult to curb such practices. The best control is to catch violators in the act and prosecute.

Visitor Control

Visitor numbers are presently controlled by several factors. There is a minimum of publicity, written or otherwise, distributed about Meyer. The Preserve is located in a sparsely populated area a fair distance from main roads. Unpaved local roads make access relatively difficult. Parking is limited to small pull-offs. Numerous other sanctuaries and parks exist nearby that advertise their availability to a greater extent

Policies for Group Use

All school groups should prearrange their visits with the resident naturalist. Groups must stay on trails and be accompanied by the resident naturalist or another responsible adult. Fragile areas such as wetlands, vernal pools, rare flora sites, and foundations should (according to the trip's subject) be avoided, viewed from perimeters, or very carefully (and infrequently) examined. Collecting or sampling should be prohibited.

Liaison

Nearby public schools include:

Byram Hills Schools in Armonk;
Bedford Schools in Mount Kisco, Bedford Hills, and
Bedford Village; and
Chappaqua Schools in Chappaqua.

Only the Byram Hills Schools are close enough to Meyer for feasible use. Other schools are either closer to Butler, Westmoreland, or other sanctuaries or have their own forested lands at the school site.

Parking

Parking facilities are located at the main parking site and the various pull-offs along Oregon Road. The capacity of the main parking site can be increased from three cars to approximately seven cars and this should be undertaken.

There is a site large enough for a school bus on Town of Mount Kisco property which Meyer has obtained permission to use.

FINANCE

The Meyer Preserve is financed by the income from a \$200,000 endowment given to the Nature Conservancy in 1973 by the trustees of the Overlook Fund which is administered by the New York Community Trust. Since 1973, only a portion of the yearly income has been spent. The balance has been accumulated in the endowment fund and the combined income and principal now amount to approximately \$235,000. Interest income for the year ending December 31, 1979, was \$13,955.49.

Expected expenditures for the current fiscal year (1980) are as follows:

Operating Costs

Salary and benefits	\$3665	
Utilities (Butler house)	1220*	
Preserve maintenance	500	
Programs and mailings	425	
travel	100	
House maintenance	500*	
House insurance	100*	
General	500	7010

Capital Improvements

Permanent signs and barriers	<u>500</u>	500
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<u>Special Projects</u>	<u>0</u>	<u>0</u>
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Total		7510
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Between 1973 and 1979, income from the endowment was used primarily for rent paid to the Butler Sanctuary for the resident naturalist's house, for sanctuary maintenance, and for surveys required when an exchange of land was made with a neighboring landowner. It should be noted that the Butler house, in addition to housing the resident naturalist, whose services are

* These expenses are shared equally by the two sanctuaries. The figure given represents Meyer's share.

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The Nature Conservancy

Executive Office
201 Duane St. 5th Floor
Boston, Mass. 02110-1402
Tel: 617-552-5500

file:
Meyer
Prexwe -
Road closing

October 19, 1990

Joyce heard back from
Selya. They are returning
to pay for installation of
gate, maintenance of road.
We should pursue getting
estimates for gate.

Robert P. Selya, Esq.
Law Department
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1800
New York, New York 10003

Re: Oregon Road Closing
Utility Easement

Dear Mr. Selya:

I am in receipt of various items of correspondence between all the parties interested in the closing of Oregon Road.

While there have been communications subsequent to your September 26, 1990, letter, I assume that we should utilize that letter and the draft utility easement enclosed therein as a point of reference from which to bring the issue to the next level of negotiation. Please correct me if I am wrong, as this letter will refer to that version of the easement.

Thank you for including the "release, hold harmless, and indemnify" clause, the restrictions on use of biocides, and provision for notice to the Conservancy prior to the cutting or trimming of trees. With respect to the latter item, the phrase "... so as to not interfere with scheduling of public and private field trips near or through the easement area" should be deleted. Field trips are, of course, an important consideration, but not the only one for the Conservancy. Since our property is managed as a nature preserve, advance notice is additionally necessary to enable a Conservancy representative to be on site the day of the cutting in order to ensure that no cutting occurs on our unencumbered land.

I understand from Ms. Blecher that the Town of New Castle will consent the use of tax maps to identify the road. Additional language should, however, be inserted in the body of the easement regarding current width of the road so that there will be no question in future years.

Regarding the question of who will be responsible for installation of the gate and maintenance of the surface of the road, we very much appreciate Consolidated Edison's agreeing to assume these responsibilities, as indicated in the above referenced letter, of course, we would expect Consolidated Edison

TNC000471


Mr. Robert P. Selya, Esq.
October 18, 1990
Page 2

to provide both Rockefeller University and The Nature Conservancy with keys to such gate. I must confess to some confusion as to the immediately preceding language requiring that the University and the Conservancy covenant that the existing grave will remain undisturbed and unchanged. Perhaps we can discuss this and other issues, such as the reference in the "First" paragraph to gas lines, as well as the right granted in the "Third" paragraph, by phone.

May I suggest a conference call to discuss these issues during the week of October 29? While I will be out of the office the entire week of October 22. I will be happy to coordinate and set up a conference call if you will let me know (by fax or by message with the Conservancy's receptionist) a convenient date and time. By carbon of this letter, I am asking Ms. Blecher and Mr. Charbonneau to similarly let me know their availability.

I look forward to hearing from you.

Sincerely,


Joyce A. Kittredge
Regional Attorney
Eastern Region

JAK/ct

cc: Lynn E. Blecher, Esq.
Thomas Charbonneau, Esq.
Olivia Millard

bcc: Paul Novak, Amy Lester, Hans Birle, Meyer Preserve (Site Admin) file.

TNC000472

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CONSENT AND RELEASE (OREGON ROAD CLOSING)

WHEREAS, the Superintendent of highways of the Town of New Castle proposes to discontinue and close a portion of Oregon Road located in the Town of New Castle as described on Schedule A attached hereto; and

WHEREAS, Rockefeller University, with an office address at 1230 York Avenue, New York, New York 10021, owns certain property shown on the Tax Map of the Town of New Castle and designated as Section 27, Sheet 2, Lot A43, and Section 27, Sheet 2, Lot A52, which property has frontage on the portion of Oregon Road described in Schedule A; and

WHEREAS, Rockefeller University does not object to the closing and discontinuance of said portion of Oregon Road;

NOW, THEREFORE, Rockefeller University hereby consents to the closing and discontinuance of the said portion of Oregon Road as described in Schedule A and Rockefeller University further hereby releases the Town of New Castle and the Superintendent of Highways from all damages, claims and causes of action, of any kind whatsoever, both direct and indirect, as a result of or arising out of the discontinuance and closing of said portion of Oregon Road.

ROCKEFELLER UNIVERSITY

By: _____

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

On the day of , 1989, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he resides at No. _____

_____ ; that he is the _____ of Rockefeller University, the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

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TOWN BOARD: TOWN OF NORTH CASTLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

-----X
In the Matter of the Application of

AMENDED
VERIFIED PETITION
FOR SPECIAL USE
PERMIT

SEVEN SPRINGS LLC

For Special Use Permit to Allow the use
of a Membership Club pursuant to
Article VII of the North Castle
Zoning Ordinance on the Subject Premises
known and designated on the Tax
Assessment Map of the Town of
North Castle as Section 2, Block 6,
Lots 1 & 2.

-----X
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS.:

Petitioner, SEVEN SPRINGS LLC, as and for its Verified
Petition, alleges and states as follows:

1. The Petitioner SEVEN SPRINGS LLC, is a New York limited
liability company with a principal place of business at 725 Fifth
Avenue, New York, New York 10022 and is the owner of the property
commonly known as "Seven Springs". That property consists of
approximately two hundred (200) acres of which ninety one (91)
acres are located in the Town of North Castle, seventy eight and
one half (78.5) acres are located in the Town of Bedford and
approximately thirty (30) acres are located in the Town of New
Castle. A copy of the proposed site plan is submitted herewith
and made a part hereof.

THE SUBJECT PREMISES

2. The portion of the property which is the subject of
this application consists of ninety one (91) acres and is known

and designated on the Tax Assessment Map of the Town of North Castle as Section 2, Block 6, Lots 1 & 2 (hereinafter the "SUBJECT PREMISES").

3. The SUBJECT PREMISES is located to the west of Byram Lake and abuts the Towns of Bedford and New Castle.¹

4. The SUBJECT PREMISES is located within a One Family Residence District (R-2A) and has the following uses adjacent to its boundaries:

a. Located to the east of the SUBJECT PREMISES is Byram Lake which is solely within the Town/Village of Mount Kisco.

b. The property to the south of the SUBJECT PREMISES is zoned One Family Residence District (R-2A), is located in the Town of North Castle and has been developed in accordance with the R-2A zone.

c. The property to the north of the SUBJECT PREMISES is zoned Residence Four Acre (R-4A) District, is located in the Town of Bedford and is part of the two hundred (200) acre estate referred to above. This portion of the property, which consists of seventy eight and one half (78.5) acres, is the subject of a special permit application for a private club, which application will be submitted to the Town of Bedford.

d. The property to the northwest of the SUBJECT PREMISES is zoned One Family Residence (R-1A) District, is located in the Town of New Castle and is part of the two hundred (200) acre estate referred to above. This portion of the property, which consists of approximately thirty (30) acres, is the subject of a subdivision application for twelve (12) single family homes, which application will be submitted to the Town of New Castle.

¹ The portions of the property located in the Towns of Bedford and New Castle which are adjacent to the Subject Premises are the subject of separate applications in each town for development of the proposed project.

PROPOSED PROJECT

A. OVERVIEW

5. On the two hundred (200) acres, the Petitioner proposes to develop a high quality, private membership club which will include a golf course, a clubhouse, tennis courts with member lounge and exercise room, fifteen (15) single family luxury residential homes and ample parking. The SUBJECT PREMISES will contain a portion of the golf course, the club house, the pro shop as well as parking. Additionally, a portion of the SUBJECT PREMISES is to be developed into three (3) single family residential luxury homes. A subdivision application will be submitted to the Planning Board of the Town of North Castle. A special permit application will be submitted to the Zoning Board of Appeals of the Town of Bedford for the tennis courts and that portion of the golf course located in the Town of Bedford. A subdivision application will be submitted to the Planning Board of the Town of New Castle for the development of twelve (12) private single family dwellings on approximately thirty (30) acres.

B. GOLF COURSE

6. The proposed world-class golf course will be located on a one hundred seventy (170) acre parcel situated in the Towns of North Castle and Bedford. The project, as presently proposed, utilizes the existing open meadows, upland woodlands and natural lowlands and maintains the beautiful vistas which abound throughout the site.

7. The plan for the proposed golf course was created by Arthur Hills & Associates, a world renowned golf architect. A copy of the preliminary routing diagram of the golf course is attached hereto as Exhibit "A". Careful sensitivity has been given to the natural state of the site. Additionally, in an effort to minimize disruption of the SUBJECT PREMISES, specimen trees have been saved, a majority of the woodland area will remain intact, watersheds will be maintained and the natural features will be integrated into the course plan.

8. Although some golf holes extend into two municipalities, it is expected that ten (10) of the eighteen (18) golf holes will be located in the Town of North Castle.

C. GOLF CLUBHOUSE

9. The golf clubhouse, which is located within the Town of North Castle, will be located in the existing mansion and will be entered via an improved entrance road to a refurbished forecourt with a fountain and Porte Cochere. Adjacent to the clubhouse will be a one third (1/3) acre putting green and a pro shop.

10. The mansion, which has thirty eight thousand (38,000) square feet of interior space on four (4) levels, will be restored and renovated as a clubhouse for the use of members and their guests.

11. Located on the first level of the clubhouse will be the ladies facility of approximately one thousand eight hundred (1,800) square feet which will contain a locker room and other amenities. The ladies facility has direct access to the golf

course.

12. The main floor, eleven thousand (11,000) square feet, will contain three dining rooms, a bar, lounge and grille all of which will be served by a modern kitchen facility. The existing indoor pool will be expanded into a two thousand (2,000) square foot facility. The south terrace will be renovated to allow for summer dining.

13. Much of the mezzanine floor will accommodate the men's locker room complex which is five thousand four hundred (5,400) square feet complete with exercise space and card rooms. The balance of this floor and all of the top floor is being reserved to serve as limited member/guest accommodations. The mezzanine floor will accommodate three guest bedrooms and the third floor will accommodate nine guest bedrooms.

14. Additionally, the plan proposes to restore the building's surfaces and finishes, install a new heating and air conditioning system, automatic fire sprinklers, a new elevator, exiting stairs and access for the handicapped.

D. ASSOCIATED STRUCTURES AND USES

15. The existing Orangerie will be transformed into a two thousand three hundred (2,300) square foot pro shop for members of the golf club and their guests.

E. PARKING

16. The provided parking meets the parking requirements of each of the zoning ordinances of the Towns of Bedford and North Castle. Specifically, the clubhouse (located in North Castle)

requires one (1) space for every three (3) members and an additional one (1) space for every three (3) seats of dining. Therefore, in anticipation of three hundred (300) golf members along with a two hundred (200) seat dining-meeting room, the North Castle Zoning Ordinance requires one hundred and sixty seven (167) parking spaces. Ninety one (91) parking spaces will be located in the Town of North Castle and seventy six (76) will be located in the Town of Bedford.²

F. SUBDIVISION

17. Also planned within the Town of North Castle is the subdivision of approximately six and one half (6.5) acres to develop three single family luxury homes.

G. REOPENING OF OREGON ROAD

18. In an effort to provide as many means of egress and ingress to the project as possible, the Petitioner will seek the reopening of Oregon Road and take all necessary and appropriate steps in connection therewith.

NECESSARY APPROVALS

A. SPECIAL USE PERMIT REQUEST - GOLF CLUB

19. SEVEN SPRINGS LLC hereby requests the issuance of a special permit pursuant to Article VII of the Town of North Castle Zoning Ordinance (hereinafter "ZONING ORDINANCE") in order

²The clubhouse and dining-meeting room is located in the Town of North Castle, therefore, the number of parking spaces was calculated based upon the requirements set forth in the North Castle Zoning Code. In addition, the North Castle Zoning Code was utilized due to its more stringent parking requirements than those contained in the Bedford Zoning Code.

to develop the private club including the golf course, the golf clubhouse, the pro shop and sufficient parking. A copy of the special permit application is attached hereto as Exhibit "B".

20. Section 213-30 of the ZONING ORDINANCE authorizes the issuance of special permits, provided that the Town Board of the Town of North Castle determines that the conditions contained therein have been satisfied. The Petitioner's application satisfies those conditions and standards as follows:

a. The location and size of the proposed uses, as well as the nature and intensity of the operations involved with the proposed uses are such that they will be in harmony with the Residential District in which the proposed project is located. The proposed use will be significantly less intense than other uses that could be developed under existing zoning without the issuance of a special permit.

b. The location, nature and height of all structures, as well as all proposed plantings on the SUBJECT PREMISES, will not hinder or discourage development of adjacent parcels of property. In fact, the proposed project will enhance and encourage such development due to the preservation of vast amounts of open space contemplated under the present plans.

c. The operations in connection with the proposed special permit uses will not be objectionable to nearby property owners.

d. All parking areas will be of adequate size and will be suitably screened from adjoining residential uses. The entrance and exit drives to the SUBJECT PREMISES will be laid out so as to achieve the maximum convenience and safety.

e. Where required there will be compliance with the provisions of the Town of North Castle Flood Hazard Ordinance.

f. The requested special permit uses will not have a significant adverse effect on the environment and have been designed in an extremely environmentally sensitive manner.

21. Additionally, §213-33 of the ZONING ORDINANCE requires that a special permit use conform to certain additional standards and regulations contained therein. Subsection (I) governs the

issuance of special permits for membership clubs. The Petitioner's application satisfies those specific standards and regulations as follows:

a. "Purpose":

One of the stated purposes of the this section of the ZONING ORDINANCE is to encourage the use of land in residential districts for recreational purposes, such as golf courses. The ZONING ORDINANCE also encourages the maintenance of the land as open space so as to protect and enhance the visual and environmental quality of the town while also protecting the quality of the environment and the property values of adjacent and nearby residential uses. The proposed project satisfies this purpose in all respects and will preserve open space and protect the natural environment to a much greater extent than would other types of development which are permitted as of right.

b. "Location and Use":

The club has direct access to a major collector road. Traffic will not exceed that which will be expected if the premises were developed for the permitted residential purposes.

c. "Buffer Area":

The required buffer areas will be provided along all lot lines adjoining all residential districts.

d. "Special Setback Requirements":

The proposed development includes the renovation of the mansion and the existing indoor swimming pool and relates harmoniously to the existing residential character of the district in which the clubhouse is proposed to be located. Such facility is currently situated in compliance with the setback requirements of the ZONING ORDINANCE.

e. "Management":

All required management and organizational documents will be submitted as part of the special permit approval process.

B. SUBDIVISION APPROVAL

22. SEVEN SPRINGS LLC will also seek to obtain subdivision approval for the creation of three buildings lots for three

luxury homes.

ENVIRONMENTAL PROCEDURES

23. Attached hereto is a Long Environmental Assessment Form (see Exhibit "C") to commence the environmental process. As required, all substantive and procedural review will be undertaken pursuant to Article 8 of the Environmental Conservation Law of the State of New York and its implementing regulations, Part 617 of the New York Codes, Rules and Regulations, the State Environmental Quality Review Act (SEQRA). All local laws, including the Town of North Castle local environmental laws, will be followed. It is proposed that the Town of North Castle be designated as the lead agency for the purposes of such environmental review.

WHEREFORE, it is respectfully requested that this matter be placed on the calendar of the Town Board of the Town of North Castle and that the relief sought herein be in all respects granted.

Dated: White Plains, New York
June 24, 1996

Respectfully submitted,

ALBERT J. PIRRO, JR.
Pirro, Collier, Cohen & Halpern, LLC
Attorneys for the Petitioner
140 Grand Street, Suite 701
White Plains, New York 10601
(914) 684-6800

TOWN BOARD: TOWN OF NORTH CASTLE
COUNTY OF WESTCHESTER: STATE OF NEW YORK

-----X
In the Matter of the Application of

VERIFICATION

SEVEN SPRINGS LLC


For Special Use Permit to Allow the use
of a Membership Club pursuant to
Article VII of the North Castle
Zoning Ordinance on the Subject Premises
known and designated on the Tax Assessment
Map of the Town of North Castle as
Section 2, Block 6, Lots 1 & 2.
-----X

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS.:

DONALD TRUMP, being duly sworn, deposes and says:

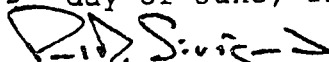
I am a Managing Member of SEVEN SPRINGS LLC, the Petitioner
in the above captioned proceeding.

I have read the foregoing Amended Verified Petition in the
proceeding, know its contents, and I am acquainted with the facts
upon which it is based. The Petition is true to my knowledge,
except as to those matters stated to be made upon information
belief and, as to those matters, I believe them to be true.



DONALD TRUMP

Sworn to before me this
21st day of June, 1996



Notary Public

PAUL D. SIRIGNANO
Notary Public, State of New York
No. 4918011
Qualified in Westchester County
Commission Expires December 31, 1997

J

67

MAR 18 2004

name please

K to CC

Mark Kay
T Williams
VILLAGE MANAGER

William F. Williams

Thats Kate



MAYOR

J. Michael Cindrich

VILLAGE TRUSTEES

Peter DiChiara
DEPUTY MAYOR

George L. Griffin, Jr.

Peter F. Grunthal

Anthony C. Markus

VILLAGE/TOWN OF MOUNT KISCO

WESTCHESTER COUNTY, NEW YORK

104 Main Street, Mount Kisco, NY 10549-0150

Tel (914) 241-0500 · Fax (914) 241-9018

www.mounckisco.org

March 17, 2004

Katie Dolan
Executive Director
The Nature Conservancy
19 North Moger Avenue
Mount Kisco, New York 10549

Dear Katie,

It was a pleasure meeting with you last week and rewarding to know that we both share the ideology of preserving our environment. As we discussed, the Village of Mount Kisco has long regarded the proposed Seven Springs Golf Course as one of the greatest threats to its drinking water supply. We are very concerned that pesticides and other chemicals in the storm water runoff from the golf course would enter the adjacent Byram Lake reservoir, which is the primary source of drinking water for 10,000 people. The prospect of clear cutting thousands of trees in the watershed area is also of great concern to our residents.

A solution that would end this threat seems to be at hand, and we the residents of Mount Kisco need the help of the Nature Conservancy in bringing what we consider a reasonable solution to reality.

Our sustained efforts at opposing the governmental permits needed for the golf course seem to have moved Donald Trump to consider the alternative of abandoning the golf course and using the land instead for a 17-unit residential subdivision. The large lot sizes, lack of extensive regrading and other features have convinced us that such a subdivision would have far less detrimental environmental impacts than the golf course. Trump has also agreed to consider our recommendations concerning buffer zones, limitations on pesticide use, and other measures that would further reduce the residential project's impacts. If he adopts these recommendations, we anticipate supporting this project.

TNC000889

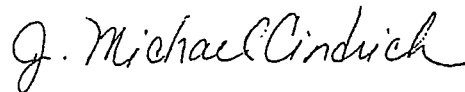
The only apparent difficulty is that the Town of Bedford is insisting on requiring an emergency access road through the Town of North Castle. The most logical route would be through land that The Nature Conservancy owns in North Castle. This route would not be a road, it would simply be a cleared path with crash gates at both ends so that emergency vehicles could pass through in case the sole road access to the site, which is through Bedford, is blocked. Since this path would carry little or no traffic, and would have no paving or obstacles, it would not impair the ecological character of The Nature Conservancy's land. The land could still be owned by The Nature Conservancy, subject to an easement granted to the Town of North Castle. I understand that Trump would be willing to compensate The Nature Conservancy for the grant of this easement.

We are aware of the concerns the Nature Conservancy harbors regarding the appearance of being the facilitator of development, but in this instance the Nature Conservancy would be acting in the best interest of the environment and helping protect the drinking water of our small Village. Both the Nature Conservancy and the Town of Bedford must realize that standing in the way of this reasonable solution may result in the reversion of the housing solution back to the golf course application. We hope that an entity that considers itself a leading environmental organization would assist in resolving a real environmental threat, and assist the Village of Mount Kisco in protecting our water supply. We understand that The Nature Conservancy has been under external pressures of late, but the men, women and children of Mount Kisco should not be the victims.

I very much hope that The Nature Conservancy agrees to grant the easement. We are exploring legal options that we prefer not to exercise: two provisions of New York State law – N.Y. Village Law Sections 6-624 and 11-1106 – authorize villages to exert the power of eminent domain over land in nearby towns that are needed for recreational or water supply purposes.

I will solicit from the Trump Organization any requests, suggestions or demands of the Nature Conservancy relative to this proposal and I am looking forward to working with you on this and other efforts to protect our environment.

Sincerely,



J. Michael Cindrich
Mayor

Cc: Lee Roberts, Supervisor Town of Bedford
Whitney Singleton, Village Attorney
Michael Gerrard, Special Counsel
Suzanne Grant, Chairperson, Byram Lake Committee

K

U

JAMES FELT & COMPANY
INCORPORATED

REAL ESTATE

358 FIFTH AVENUE · NEW YORK

November 16, 1971

Estate of Agnes E. Meyer
c/o Morgan Guaranty Trust
Company of N. Y.
22 Fifth Avenue
New York, N. Y. 10036

Re: Seven Springs Farm
Oregon Road
Mount Kisco, N. Y.

Gentlemen:

In accordance with your request we have examined the above premises consisting of a mansion type residence and various farm buildings on 596.558 acres of land in the vicinity of Oregon Road and Sarles Street, adjacent to the west side of Byram Lake, located in the Towns of New Castle, Bedford, and North Castle, Westchester County, New York.

The purpose of our inspection is to value the premises as of the date of death of the decedent.

VALUATION

In our opinion, the fair and reasonable valuation of Seven Springs Farm, as of September 1, 1970, is:

TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000)

of which Two Million Two Hundred Thousand Dollars (\$2,200,000) represents land value.

In arriving at our valuation we have, among other factors, considered the following:

TNC000320

1. Location Trends. We anticipate the continued development of Westchester County in the vicinity of the subject premises.
2. Zoning and its restrictive effect upon land value and use.
3. Sales of parcels of land and improved property in the vicinity.
4. Summation Value.

Our valuation includes cars, trucks and other maintenance equipment which are of nominal value.

In light of these considerations and other factors set forth in our appraisal report which follows, we have arrived at the aforementioned valuation.

Respectfully submitted,

Arthur F. Berman

Vice President M.A.I.

L

P.001-11
TNC-1
CUMM

COHN & SPECTOR
ATTORNEYS AT LAW

JULIUS W. COHN*
WAYNE H. SPECTOR

200 EAST POST ROAD
WHITE PLAINS, NEW YORK 10601-4959
(914) 428-0505

FACSIMILE: (914) 428-0518
EMAIL: juliuscohn@aol.com

Firm Founded 1971 as
Cerrato, Sweeney & Cohn
Thereafter:
Cerrato Sweeney Cohn Stahl & Vaccaro
Thereafter:
Sweeney Cohn Stahl Spector & Frank

Also admitted in Florida*

August 16, 2010

VIA FACSIMILE ONLY TO: 845-228 -9617

Hon. Francis A. Nicolai
Putnam County Courthouse
44 Gleneida Avenue
Carmel, NY 10512

**Re: Seven Springs, LLC v. The Nature
Conservancy, et al.
Index No.: 9130/06
Summary Judgment Motion Presently
Scheduled to be argued and submitted on
September 2, 2010.**

Dear Justice Nicolai

This is in response to a letter faxed to you on August 16, 2010 by the firm of Oxman, Tulis, Kirkpatrick, Wyatt & Geiger, LLP wherein the Defendants request that Plaintiff Seven Springs, LLC's summary judgment motion be adjourned without date "pending the completion of discovery in this action."

The letter is also written on behalf of Leonard Benowich, counsel for The Nature Conservancy ("TNC").

Our client, Plaintiff Seven Springs, LLC, and this office object to the above request and ask that the motion and the summary judgment motion be argued and fully submitted, as presently scheduled, on September 2, 2010 for the following reasons:

1. If counsel believes that the motion is truly "premature" (it is not, as will be shown, *infra*), any such showing by defense counsel should be in affidavit form and submitted in the course of the submission of the summary judgment motion, CPLR §3212(f). Upon such an attempted showing, mere expression that a hope that discovery will reveal something helpful to the Defendants is no basis for denying a summary judgment motion, Jorbel v. Kopkol, 31 A.D. 3d 612 818 N.Y.S. 2d 601 (2nd Dept. 2006). In the third paragraph of Mr. Oxman's August 16, 2010

letter requesting that the summary judgment motion be held in abeyance and the motion be "adjourned without date", he states:

"... Defendants wish to obtain discovery from the three title companies who have provided letters to Plaintiff which Plaintiff relied upon in making its summary judgment motion." (emphasis supplied)

The above is simply not true. The letters "provided to Plaintiff" include the following:

a. A letter from Land America Commonwealth dated February 16, 2006, written to Stephen Barone, then counsel for the Town of North Castle, which was attached to a letter dated April 28, 2006 written by Roosevelt & Benowich (the predecessors to the Benowich law firm) which enclosed a copy of that letter.

The Roosevelt & Benowich firm, writing to both the Supervisor and the Town Attorney of the Town of North Castle on April 28, 2006 in part states (on page 2 of that letter):

"We asked Stewart Title Insurance Company to examine the title. In a letter dated April 27, 2006, Stewart advised us that, for various reasons, it "cannot conclude, and would not be willing to insure, that Seven Springs has a private easement over that portion of Oregon Road which lies within TNC's lands." A copy of that letter is attached for your information."

We also reviewed the letter dated February 16, 2006, in which Stephen J. Bobolia of Fidelity Title, Ltd. advised you that, in his opinion, Seven Springs does have a private easement for access over the abandoned portion of Oregon Road lying within TNC's land."

In addition, Roosevelt & Benowich, LLP also wrote in their April 28, 2006 letter to the authorities of the Town of North Castle that they were objecting to Seven Springs's title company (Fidelity Title) insuring "... an easement in common with others southerly over a strip of land known as Oregon Road to the public road known as Oregon Road."

Hon. Francis A. Nicolai
August 16, 2010
Page 3

In addition to the Defendant's having full knowledge of these three title companies and their participation since at least 2006, these letters and the identities of these title companies was produced by Plaintiff and the Town of North Castle (formerly a defendant in the above action) in 2008. North Castle's response was a response to omnibus demands and was supplied to all of the other Defendants and to the Plaintiff.

2. Prior to the making of the Seven Springs's summary judgment motion now returnable before you on September 2, there was no stay in the action and thus the Defendants had every opportunity, for years, to conduct any discovery or issue any subpoenas they felt would afford them the "theoretical evidence" they now assert they "need" in order to properly address Plaintiff's summary judgment motion. These tactics are an outrageous continuation of vexatious litigation and should not be countenanced by this Court. The issues raised in the summary judgment motion are direct, limited and are based on well-settled law. The subject deeds involved in the summary judgment motion all contain the identical language that has been held by the Second Department in Coleman v. Village of Head of the Harbor, 163 A.D. 2d 456, 558 N.Y.S. 2d 594 (2d Dept. 1990) to grant an express easement as is claimed by the Plaintiff in the instant action.

Based on the above, any "discovery" of title company material is not going to address the narrow issue of law of the language in the deeds providing an express easement under the authority of Coleman.

Relative to the Defendants' request that the summary judgment motion "be adjourned without date" since they "haven't had an opportunity" to depose Donald J. Trump and the summary judgment motion is supported by Mr. Trump's affidavit:

a. The Defendants made no effort to depose Mr. Trump for upwards of three years.

b. The Defendants do not even attempt to allege here what they believe his testimony will yield that would defeat Plaintiff's motion for summary judgment. Mere speculation is insufficient to warrant a denial of summary judgment in order to conduct further discovery.

c. Mr. Trump's supporting Affidavit was historical in nature, citing the chain of title and various of the letters produced years ago in discovery.

3. The subpoenas which prompt the Defendant's request for an "adjournment without date" are addressed to:

Hon. Francis A. Nicolai
August 16, 2010
Page 4

a. Stewart Title Company, the title company engaged by Defendant TNC and the Benowich law firm's predecessor (which includes Mr. Benowich). Any material from Stewart Title was already in the possession of the Benowich law firm.

b. RG Title Agency: this agency likewise was retained by The Nature Conservancy and the material subpoenaed includes the documentation provided in discovery by The Nature Conservancy itself and Bates stamped by them. The ultimate title report was not produced by TNC in discovery (although demanded) and that is the basis for the subpoena of the same. It is presumed that TNC is in possession of its own title report, having requested and paid for it (but unfortunately, having withheld it in discovery).

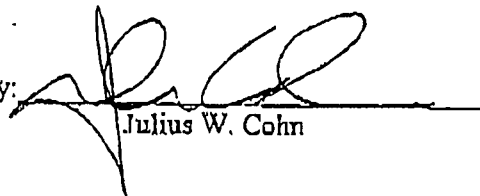
There is simply no basis for an "adjournment without date" in this case and it would be a total miscarriage of justice to do so. If, in fact, the Defendants wish to press their request, it should be in affidavit form and within the context of answering the summary judgment motion which, again, is returnable before this Court on September 2, 2010. The Defendants must make a showing as to any claim of a necessity for further "discovery" and why they are "hampered" in answering the narrow issues raised in the summary judgment motion as well as being made to explain their own delay in seeking (or providing) such material. To do otherwise would deny the Plaintiff the opportunity to challenge any such claim and to seek further review if the same were given any credence at all by this Court.

Finally, no one has ever requested that the undersigned agree to adjourn the pending motion "without date." The summary judgment motion has already been adjourned once (at the Defendants' request). It should now proceed as scheduled.

Very truly yours,

COHN & SPECTOR

By:



Julius W. Cohn

JWC/ls

cc: Oxman, Tulis, Kirkpatrick, Whyatt & Geiger (via fax only to: 914-422-3636)
Benowich Law, LLP (Attn.: Leonard Benowich, Esq.) (via fax only to: 914-946-9474)

COHN & SPECTOR
ATTORNEYS AT LAW

JULIUS W. COHN*
WAYNE H. SPECTOR

200 EAST POST ROAD
WHITE PLAINS, NEW YORK 10601-4959
(914) 428-0505

FACSIMILE: (914) 428-0519
EMAIL: juliuscohn@gmail.com

Firm Founded 1971 as
Cerrato, Sweeney & Cohn
Thereafter:
Corrado Sweeney Cohn Stahl & Vaccaro
Thereafter:
Sweeney Cohn Stahl Spector & Frank

Also admitted in Florida*

August 17, 2010

VIA FACSIMILE ONLY TO: 845-228-9617

Hon. Francis A. Nicolai
Putnam County Courthouse
44 Gleneida Avenue
Carmel, NY 10512

Re: Seven Springs, LLC v. The Nature
Conservancy, et al.
Index No.: 9130/06
Summary Judgment Motion Presently Scheduled to be
argued and submitted on September 2, 2010

Dear Justice Nicolai

This is in further response to the August 17, 2010 latest cannonade in what the Defendants, apparently now all speaking through the Oxman Tulis firm, have fired off to you in an attempt to halt the argument and submission of the summary judgment motion scheduled to be heard before you on September 2, 2010.

Simply put:

1. If the Defendants object to the issuance of the two subpoenas returnable before you at the commencement of the summary judgment argument, they can move to quash the same. A letter in that regard is simply improper.
2. The Defendant's August 16, 2010 request that the summary judgment motion be adjourned without date is basically based on two subpoenas (copies faxed herewith), one to RG Title Agency and one to Stewart Title Insurance Company. The objections to the subpoenas are without merit for the following reasons:
 - a. The subpoenas are not for discovery. They are returnable before Your Honor at the time the summary judgment motion is argued and are for use in the course of that argument.
 - b. Both subpoenas are to title agencies utilized solely by Defendant, The Nature Conservancy. Thus:

Poor
Quality

- i. The Plaintiff did not deal with RG Agency. We are subpoenaing what The Nature Conservancy wrote to, sent and received from RG Agency. Typical of this is an October 14, 1995 letter produced by The Nature Conservancy and Bates stamped by it. A copy is faxed herewith.
- ii. Stewart Title Insurance Company performed work for The Nature Conservancy under their file number 06-30710-W. This material was never furnished to us by TNC. It was withheld by them improperly despite an express demand for all title policies and related material.

As can be seen from the above, the two subpoenas that started this barrage of correspondence are for material presumably possessed for years by Defendant The Nature Conservancy and in part not turned over pursuant to demand. Notwithstanding such facts, it was these two subpoenas that presumably "prompted" the Defendants' to ask for an adjournment of the summary judgment motion without date, this after having already obtained one adjournment of that motion with no mention of any discovery that might be required on their side to properly answer the motion. The request is a sham made for the sole purpose of delaying these proceedings.

3. The Oxman Tulis August 17, 2010 letter, for the first time, now seeks to depose non-party witnesses from various title companies. Apparently, Mr. Oxman inadvertently omitted this request from yesterday's letter. This is a desperate attempt to delay placing the summary judgment motion before this Court on September 2, 2010, the same date on which the Court is scheduled to hear a "reargument" motion in the related case involving the same parties wherein the Plaintiff seeks monetary damages. In that case, the Defendants, not happy with this Court's decision denying their motion to dismiss the Amended Complaint, seeks to reargue this Court's decision thereon. All of the facts on both motions should be before the Court at the same time, regardless of how much the Defendants may desire to avoid such procedure. The Defendants, apparently having learned the meaning of *sine die*, wish to apply that concept to avoid litigating this case. We know of no precedent for a *sine die* adjournment of a motion and ask the Court to allow both motions to be heard as scheduled on September 2, 2010.

Very truly yours,

COHN & SPECTOR

By: 

Julius W. Cohn

JWC/lis

cc: Oxman, Tulis, Kirkpatrick, Whyatt & Geiger (via fax only to: 914-422-3636)
Benowich Law, LLP (Attn.: Leonard Benowich, Esq.) (via fax only to: 914-946-9474)

M

THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

-----X
SEVEN SPRINGS, LLC,

Plaintiff,

ORAL ARGUMENTS

Index No. 21162/2009

- against -

THE NATURE CONSERVANCY,

Defendant.

-----X
Putnam County Courthouse
20 County Center
Carmel, New York 10512
September 2, 2010

BEFORE:

HON. FRANCIS A. NICOLAI
Justice of the Supreme Court

APPEARANCES:

JULIUS W. COHN, ESQ.
Attorney for the Plaintiff,
Seven Springs, LLC
Cohn & Spector, Attorneys at Law
200 East Post Road
White Plains, New York 10601

LEONARD BENOWICH, ESQ.
Attorney for the Defendant,
The Nature Conservancy
Benowich Law, LLP
1025 Westchester Avenue
White Plains, New York 10604

ORAL ARGUMENTS

papers have been submitted, what papers have to be submitted. I want to get these cases in front of me. I want to get the record in front of me. I want to get the briefs defending in front of me. Because we got a lot of work on this case, a lot of papers to read and I want to get started. This is a very complex matter, both cases. And it's going to take a lot of work. And I went off on vacation thinking I didn't have the case, came back and found out I have the case. But that's the way the bottle spins sometimes.

The 2006 case, where do we stand on that? Is there a motion for summary judgment?

MR. COHN: Yes, Your Honor.

THE COURT: Brought on by you?

MR. COHN: Yes, Your Honor.

THE COURT: Okay, so Seven Springs makes a motion for summary judgment. That was submitted some

ORAL ARGUMENTS

time ago?

MR. COHN: That was filed on July 16, served on July 16 by Federal Express.

THE COURT: Where did we stand on that answer for summary judgment?

MS. ROSEN: After the summary judgment motion was served, Your Honor, the Plaintiff also served two subpoenas on title companies for co-defendant, the Nature Conservancy. At which time my partner, Mr. Oxman wrote to Your Honor and I guess you must have been on vacation.

THE COURT: No, I think I responded to that. My recollection was, was that a request for an adjournment?

MS. ROSEN: It was a request to, put Mr. Cohn's motion in abeyance, until their discovery came in and Plaintiff was never deposed in this case.

ORAL ARGUMENTS

THE COURT: I recall the argument was that he was requesting [documents from your title company.]

MS. ROSEN: The Nature Conservancy, yes.

THE COURT: Well, whatever it was and therefore whatever information that they were requesting you already had and there was no reason to delay it.

MS. ROSEN: Well, we would not have had it because --

THE COURT: So, where are we at?

MS. ROSEN: We have received no documents, we still have not scheduled Plaintiff's deposition.

MR. BENO WICH: Your Honor, other than the exchange of paper, there were no depositions in this case. There hasn't been a single deposition.

THE COURT: It's a paper chase
you don't need depositions.

MR. BENO WICH: Well, we don't

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LOURDES SALVADOR, being duly sworn, deposes and says:

That I am over the age of 18 and not a party to the within action; that I reside in Middletown, New York, that on December 10, 2010, I served the within **REPLY AFFIDAVIT ON MOTION FOR SUMMARY JUDGMENT** upon:

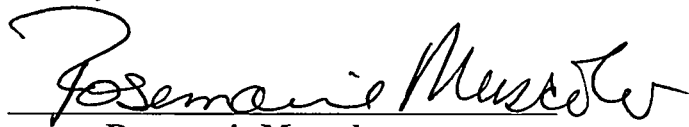
TO: Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604

Oxman, Tulis, Kirkpatrick, Wyatt & Geiger
120 Bloomingdale Road
White Plains, NY 10601

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. (Federal Express Tracking Nos.: 794205119126 and 794205140371).


LOURDES SALVADOR

Sworn to before me this
10th day of December, 2010



Rosemarie Muscolo
Notary Public, State of New York
4753358
Qualified in Westchester County
Commission Expires February 28, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.

Index No.: 9130/2006

REPLY AFFIDAVIT ON MOTION FOR SUMMARY JUDGMENT

COHN & SPECTOR

Attorneys for Plaintiff

200 EAST POST ROAD

WHITE PLAINS, N. Y 10601-4959

Tel.: (914) 428-0505 Fax: (914) 428-0519

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: _____

Signature _____

Print Signer's Name _____

Service of a copy of the within

is hereby admitted.

Dated: _____

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF
ENTRY

*that the within is a true copy of an
entered in the office of the clerk of the within named Court on*

NOTICE OF
SETTLEMENT
on

*that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____
one of the judges of the within named Court,
at _____ M.*

Dated: *White Plains, New York*
December 10, 2010

COHN & SPECTOR

200 EAST POST ROAD

WHITE PLAINS, N. Y 10601-4959

Attorney(s) for Stated Plaintiff

FILED
JUN - 1 2011
TIMOTHY C IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

State App
12/10/0

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

COHN & SPECTOR
200 East Post Road
White Plains, New York 10601
(914) 428-0505

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/2006

Plaintiff,

-against-

THE NATURE CONSERVANCY, REALIS
ASSOCIATES, THE TOWN OF NORTH CASTLE,
ROBERT BURKE, TERI BURKE, NOEL B.
DONOHOE and JOANN DONOHOE,

Defendants.
-----X

**REPLY MEMORANDUM OF LAW ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The relevant facts will not be repeated at length herein; they are as set forth in the original Affidavit of Donald J. Trump sworn to the 14th day of July 2010, the Affirmation of Julius W. Cohn dated July 14, 2010 and, to the extent necessary, as set forth in the accompanying Reply Affidavit of Hal Goldman sworn to the ____ day of December, 2010, submitted simultaneously with this Reply Memorandum of Law.

THE COLEMAN CASE IS CONTROLLING

Plaintiff's principal brief (at page 4, point 1(a) thereof) discusses Coleman v. Village of Head of the Harbor, et al, 163 A.D.2d 456, 558 N.Y.S.2d 594 (2nd Dept. 1990), *appeal denied*, 76 N.Y.2d 712, 565 N.E.2d 517, 563 N.Y.S.2d 768, in detail. Contrary to the inferences contained in TNC's opposing Memorandum of Law, Coleman does not hold that only an easement in existence may be conveyed by a grant created by the language: "TOGETHER with all right, title and interest, if any, in and to any streets abutting . . ." Coleman analyzes this specific language contained in a deed to ascertain whether such

language encompasses the grant of an express easement. It clearly and unequivocally holds that this specific language (“all right, title and interest”) is applicable to not only the possibility of a conveyance of a fee title (“title” as it appears in that clause), but the possibility of the conveyance of a “right” (such as a license or privilege) and, lastly, as applicable here, the conveyance of an “interest” as that word is contained in that clause, such “interest” constituting an express easement. Hence, the inclusion of three separate categories, conjunctively, denotes that all or some of them may be conveyed in a deed containing the subject language. Nowhere in Coleman is there a limitation that such language is insufficient to create an easement *ab. initio* or to revive one that might have been extinguished. There is no restriction in Coleman on construction of this specific language to limit it to the grant of only a fee interest or only an existing easement. Under Coleman, a grantor, by including the subject language in the deed, clearly can create an easement. The Court is urged to read Coleman.

Further, the applicable definition of an easement, as we know, has been stated: “The owner of an easement has an interest in the land of another” 4 Powell on Real Property, §34.20[1] at 34-185 (**emphasis added**).

**REPLY TO SPECIFIC POINTS AS SET FORTH IN
TNC’S OPPOSITION MEMORANDUM OF LAW**

At page 9 of the TNC opposition Memorandum of Law (“TNC Opp Mem”) TNC advances the following proposition of law as (1) applicable in all cases and (2) as applicable in this case:

“**FIRST**, Plaintiff can only claim an easement if and to the extent that its predecessors-in-title possessed such an easement.”

Not true as a blanket proposition of law devoid of certain critical elements. What must be considered are the nature and extent of the grantor’s right, title and interest to both the dominant and servient estate before any conveyance is made. It is clear that the owner of a dominant estate cannot grant an easement over

a servient estate in which he has no right, title or interest, Simone v. Heidelberg, 9 N.Y.3d 177, 847 N.Y.S.2d 511, 877 N.E.2d 1288 (2007). Simone held (9 N.Y.3d at 182) that “an easement can be created only by one who has title to or an estate in the servient tenement.” It is undisputed that at the time of the Meyer Foundation’s conveyance to Yale on January 19, 1973 (Exhibit “C” to the principal moving papers), it still retained ownership over the servient estate that it subsequently conveyed to TNC on May 25, 1973 (Exhibit “H” to the principal moving papers).

At TNC Opp Mem 10, TNC’s counsel goes on to state:

“When the Foundation executed the Yale deed in January, 1973 . . . the Foundation did not (and could not) convey an easement in or over Oregon Road because it did not then possess an easement in or over Oregon Road, *See Starcic v. Hardy*, 31 A.D.3d 630 (2nd Dep’t. 2006) (“[t]he easement at issue in this case was not and could not have been, granted in the deed from the plaintiff’s immediate predecessor to the plaintiff, because that deed could not unilaterally create an easement over the defendant’s property where none existed previously”).”

Starcic does not stand for the proposition that the owner of both a dominant and servient estate cannot create an easement where there has been none before. In fact, Starcic was not the owner of the servient tenement when the easement was created and there was an issue of fact (precluding summary judgment) as to whether such an easement had ever been in the chain of title of the servient estate. Accordingly, the reliance on Starcic is completely unfounded.

At page 10 of the TNC Opp Mem, TNC’s counsel makes factual distinctions as between Coleman and the instant case, none of which have any bearing on the legal outcome. For example, TNC’s argument (TNC Opp Mem, page 11) is that in Coleman the grantor only possessed an easement and not a fee interest; that the Second Department did not hold that the “together with” phrase is – in all cases – “sufficient to create an express easement.” TNC’s interpretation is unsupported TNC is continuing to advance the

erroneous proposition that an easement can only be conveyed where one was possessed by the grantor, and that such easement had to be in existence at the time of such conveyance (at TNC Opp Mem, pages 10, 11). In making such argument, TNC urges that Coleman held the way it did because Coleman had an easement to convey (and not a fee title) and that the Court recognized that Coleman's interest was simply an easement.

The Coleman Court nowhere discusses whether the fee owner of both the dominant and servient estate is in any way restricted from creating an easement over the servient estate that the grantor retains at the time of conveyance to the dominant estate.

At TNC Opp Mem, page 11, TNC's counsel advances the irrelevant fact that (allegedly) the road involved in Coleman was the only road available and there was a question of "necessity". However, an easement of necessity is a species of an easement implied by operation of law, and Coleman solely addressed itself to the sufficiency of language constituting an express easement. Nowhere in Coleman is an implied easement of necessity even mentioned.

Finally, in TNC's closing of its *Second* point as to why it believes Coleman is not controlling, TNC advances (TNC Opp Mem, page 12) three false and irrelevant "facts": (1) that the Yale Deed does not refer to any map" and (2) ". . . there is no evidence that any map had been delivered at the time of the Yale Deed and that (3) a survey (attached as Exhibit "1" to TNC's answering papers) ". . . was not delivered to Yale."

The falsity of these three alleged facts is evidenced by: (1) the Yale Deed (Exhibit "C" to the original moving papers) contains references to various tax assessment maps of the relevant towns in which the parcels lie as follows:

- i. At Exhibit "C", Liber 115, page 580:

"The above-described parcel being also designated by (I) Lot Number A43, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (ii) Lot Number 4A, Section 22 on the Assessment Map of the Town of Bedford."

ii. At Exhibit "C", Liber 115, page 584:

"The above-described parcel being also designated as (I) Lots Number 3 and 2(p/o), Block 6, Section 2 on the Assessment Map of the Town of North Castle, (ii) Lot Number A52, Sheet No. 2, Section 27 on the Assessment Map of the Town of New Castle and (iii) Lot Number 4, Section 22 on the Assessment Map of the Town of Bedford."

2. As to there being "no evidence that any map had been delivered at the time of the Yale Deed", one need only compare TNC's Exhibit "1" to its opposition papers (the map of the property conveyed from the Foundation to Yale) to the metes and bounds contained in the Yale deed (Plaintiff's Exhibit "C" to the original answering papers) to see that they are identical because the deed is drafted in accordance with the measurements specified on the survey map. The Henricis' survey is dated January 19, 1973 and obviously was necessary in order to draw the Yale deed.¹

3. TNC's counsel advances the proposition (TNC Opp Mem, page 10) that the survey of the property being conveyed to Yale (TNC's Exhibit "1") "was not delivered to Yale" although there is no proof of any such fact, and no such proof is offered to support such statement. To the extent that TNC counsel advances the "point" that the survey of the Yale property "was not referred to in the Yale Deed and was not filed with the County Clerk", it is not normal practice to file a private survey with the County Clerk (or with the deed). In fact, the TNC Deed contains language that was crossed out of the Deed proposing to file the survey of the TNC property along with its deed (Plaintiff's Exhibit "H" to the original moving papers at Liber 7127, page 727).

The Coleman court referred to the grantor having given to the grantee a map depicting the easement in question as further factual proof of the grantor's conveyance of such easement but not as a requirement of such conveyance of an express easement.

¹QUERY: How can one accept a deed with courses, distances, metes and bounds such as Exhibit "C" without having a survey as a reference to depict what was being conveyed, and know the deed is accurate?

Relative to the “*Third*” point TNC advances the argument (TNC Opp Mem, page “12”) that the Coleman language: “. . . is insufficient to create or establish an easement over any land” but only to convey an existing easement. Coleman has no such limitation. In examining the language in the deed to determine if an easement was granted, Coleman finds such language clear and sufficient, holding:

“The language in the 1970 deed . . . constitutes an express grant of a private easement over the subject road, independent of any public right of way . . .”

In the instant case, pursuant to the holding in Coleman, the deed from the Meyer Foundation to Yale (Plaintiff’s Exhibit “C” to the original moving papers) created the easement. None of the cases cited by TNC’s counsel to support TNC’s position that no easement was created by the Foundation by the use of the “TOGETHER with” language, supports such proposition. Strand v. Brudnicki, 200 A.D.2d 735 (2d Dept. 1994) and Margolin v. Gatto, 70 A.D.3d 1014 (2d Dept. 2010) simply do not stand for the proposition being advanced by TNC. They do not even discuss the “TOGETHER with” language addressed in Coleman, despite TNC’s contention that both cases apply to the issues raised on this motion. The third case cited by TNC (TNC Opp Mem, page 12), Sam Development, LLC v. Dean, 292 A.D.2d 585 (2d Dept. 2002) likewise does not discuss the sufficiency of the “TOGETHER with” language as to creation of an easement. Rather, Sam Development simply pertains to the proposition that a grantor cannot create an easement over land he does not own. There is nothing in Sam Development, LLC that addresses the sufficiency of the “TOGETHER with” language to create an express easement nor does that case stand for the proposition that TNC says it does (“that the “TOGETHER with” language “is only effective to convey to a grantee any express easement that previously had been granted to the grantor, as shown by prior deeds.”) (TNC Opp Mem, page 12). All three cases are simply inapplicable and do not stand for the proposition advanced by TNC.

Finally, in connection with TNC's "*Third*" point, TNC's reliance on Simone v. Heidelberg, *supra*, is misplaced. Simone is inapposite to the case at bar because there Simone did not address the topic at hand, an easement properly granted by the owner of both the dominant and servient estates of an easement over his then retained servient estate.

In its "*Fourth*" point, TNC claims that Plaintiff is seeking an easement over TNC's "Parcel" (TNC Opp Mem, page 13). This is in keeping with TNC's previous assertions that Oregon Road is merely a "so-called" road and that the road has no distinction from TNC's Parcel. TNC's deed (Exhibit "H" to the Plaintiff's principal moving papers) shows that TNC acquired more than one parcel of land. These parcels are depicted on the Henricis' surveys as distinct from Oregon Road, and the TNC deed describes the parcels by metes and bounds which do not include the roadbed of Oregon Road. However, TNC, like Yale, was given an express easement over Oregon Road and fee title to the center line of the roadbed of various parts of the road as Oregon Road abuts the various borders of the parcels conveyed. It is established that in 1973, at the time of the conveyance to Yale and the subsequent conveyance to TNC, Oregon Road was a public road. Although when the Meyer Foundation conveyed a fee title "to the center line" of Oregon Road and retained ownership (again, in January 1973) to the remainder of the roadbed of Oregon Road that it would convey to TNC in May 1973, since Oregon Road was a public road the fee ownership was at that time still subject to the public's right of usage. This was not the case in Simone; thus the argument advanced by TNC (TNC Opp Mem, page 13) that it did not have any "notice", apart from being false, and misleading,² is not

²TNC knew of and took its property subject to subdivision of the Meyer property with Yale abutting Oregon Road, and had received the Henricis surveys of both Yale's and TNC's properties, prior to TNC's acquisition of title. Most significantly, TNC's surveys recite on their face the conveyance to Yale of abutting property; therefore, that TNC had direct, specific and record notice of a Yale deed is indisputable.

supported by the Simone opinion. Meyer did not have an unfettered fee interest in the roadbed of Oregon Road to convey to TNC.

Even assuming, for the sake of argument, that the Meyer Foundation owned all the property around Oregon Road, (which it did not, since Oregon Road extends to the North and the South well past Meyer's holdings)³ although it may have retained fee title to the bed of Oregon Road, it had only a "naked or barren title" because at the time of the conveyance to Yale (and later to TNC), Oregon Road was a functional, public road and, as the Appellate Division noted in Bashaw v. Clark, 267 A.D.2d 681, 699 N.Y.S.2d 533 (3d Dept. 1999):

"A highway is nothing but an easement, comprehending the right of all the individuals in the community to pass and repass, with the incidental right of the public to do all acts necessary to keep it in repair. This easement does not comprehend any interest in the soil nor give the public the legal possession of it. The owner of the land over which a highway passes retains the fee and all rights of property not incompatible with the public enjoyment, and whenever the highway is abandoned, recovers his original unencumbered dominion. (Code Manual of the Highway Law of the State of New York, ch. XVII, at 250 [1870]." 699 N.Y.S.2d at 537.

TNC's own deed (Exhibit "H" to the principal moving papers) defines its own Parcel II (at Liber 7127, page 724 through 726) with reference to the southwest corner of the land of Yale University, setting forth the courses and distances which define the boundaries between said properties of Yale and TNC, clearly with reference to one another and with reference to Oregon Road. In this case, both Grantees of Meyer were carved out of the Meyer Estate and they were both original Grantees, there being no "chain of title."

³See Castle Assoc. V. Schwartz, 63 A.D.2d 481, 407 N.Y.S.2d 717 (2d Dept. 1978) for the proposition that Meyer's fee interest did not extinguish any easement to Oregon Road since Meyer possessed only a fractional portion thereof.

TNC'S POINT II, OPPOSING AN IMPLIED EASEMENT IS NOT BEFORE THIS COURT ON PLAINTIFF'S INSTANT MOTION FOR SUMMARY JUDGMENT

Plaintiff here seeks summary judgment on the basis of having an express easement. TNC's counsel chooses to address the issue of an implied easement (TNC Opp Mem, pages 17 - 25), claiming that the Plaintiff has abandoned its claim for an implied easement (TNC Opp Mem, page 17). TNC cannot dictate how the Plaintiff chooses to advance or try its case. The instant motion is grounded on the Plaintiff having an express easement. Coleman so holds. The deeds so reflect. Should this action necessitate further proceedings after this Court's decision on this motion, Plaintiff would then address its alternative theories as set forth in its Amended Complaint (Exhibit "A" to Plaintiff's principal moving papers). Accordingly, various of the issues raised in "Point II" of TNC's Opposition Memorandum of Law will not be addressed as they do not deal with issues raised on this motion.⁴ To the extent that TNC claims (TNC Opp Mem, page 18) that the Plaintiff has not established that Oregon Road was a public road or street in 1973, the Court is respectfully referred to the accompanying Affidavit of Hal Goldman, the exhibits attached thereto and the portions of the previous record in this case (both before this Court and in the Appellate Division) which demonstrate unequivocally that Oregon Road was a public Road in 1973. As to any claims by TNC that there has been an "abandonment" of any theory not advanced on this motion, such is not the case.

In this improper "opposition" TNC introduces a "Reverter Agreement" which is barred, and on its face does not prohibit Yale's easement. The language in the last paragraph of Coleman, *supra*, underscores the fact that anything contained outside the deed in the nature of parol evidence is barred from consideration, the Appellate Division therein stating:

⁴TNC has not cross-moved for summary judgment on the lack of an implied easement in favor of Seven Springs LLC - and has attempted to redirect the Court to an issue not before it as to thwart the determination of the existence of an express easement.

“We further note that the plaintiff’s reference, in his affidavit in support of his motion for summary judgment, to correspondence in 1971 between himself and NCI⁵, is of no import since parol evidence is inadmissible to explain, vary or contradict a deed which is clear and unambiguous . . . the language in the deed is a grant to NCI of an easement . . .” (emphasis supplied)

Thus, the effort of TNC to have this Court consider a side letter, (Def. TNC Exhibit “4”) unrecorded, between TNC and its grantor as to preserving the parcels to which it was taking title as a nature preserve is barred. Moreover, the existence of public Oregon Road through the two distinct parcels of TNC, does not, in and of itself, destroy the nature of the grant, and indeed, the grant itself – the very deed alone to TNC – contains a grant of two parcels already bifurcated by a public road! The Second Department has clearly held the “TOGETHER with” language to create a private express easement. There can be no interpretation to the contrary and, respectfully, this Court is bound by that opinion. Even when Oregon Road was “closed” to public use and discontinued as a public highway (allegedly in 1990), the private easement rights inuring to the Plaintiff’s benefit continued as granted by the Coleman language in Yale’s Deed and was not extinguished by such closure, as acknowledged by the Second Department in this case, Seven Springs, LLC v. Nature Conservancy, et al., 48 A.D.3d 545, 855 N.Y.S.2d 547 (2nd Dept. 2008) (“The abandonment of a public highway pursuant to Highway Law §205 does not serve to extinguish private easements . . .”).

PLAINTIFF AND ITS PREDECESSORS NEVER ABANDONED ANY PRIVATE EASEMENT OVER OREGON ROAD TO THE SOUTH

TNC argues (TNC Opp Mem, page 25) that the express easement granted to the Plaintiff in its chain of title was abandoned by its immediate predecessor, Rockefeller University. As set forth in the accompanying Affidavit of Hal Goldman, such is clearly not the case. In addition, TNC’s sole “evidence”

⁵Again, NCI is The Nature Conservancy.

advanced in support of its claim is the Town of North Castle's "Certificate of Discontinuance". TNC states (TNC Opp Mem, page 25-26) "The Town's Certificate states that Rockefeller "has consented" to the closing and "has adequate ingress and egress to its property by alternative means" and TNC attaches it as its Exhibit "9". As stated in Plaintiff's brief to the Appellate Division⁶ and as set forth in Plaintiff's principal Memorandum in support of the within motion (at pages 13 and 14) there must be clear and convincing proof of intention to permanently abandon an easement. Further, the "Certificate of Discontinuance" only includes a second or third-hand hearsay opinion (from an unknown source) of the position of Plaintiff's predecessor in title, Rockefeller University. To the contrary, the Goldman Affidavit refers to and attaches Exhibit "C", a letter from Rockefeller University dated April 13, 1989 which clearly states that Rockefeller University did not favor "a permanent discontinuance and closing", along with Exhibit "D", an unsigned Consent and Release to the closing of Oregon Road which was proffered to Rockefeller University, this latter document having been produced on discovery by TNC (TNC's Bates stamp appearing in the lower right hand corner, "TNC 000437"). There is evidence in this record of vehicles coming onto Oregon Road and dumping, which would affect the abutting landowners, Rockefeller and TNC. Thus, there are ample practical reasons why Rockefeller University or TNC would have been opposed to public use of Oregon Road; there is nothing in this record that demonstrates any relinquishment by Rockefeller University of its own private use of Oregon Road, and all of the surveys in this record demonstrate that the existing macadam driveway traversing Seven Springs' property to the south and connecting to the southerly part of Oregon Road has remained through the present, indicating the continuation (and not the discontinuation) of usage of Oregon Road by Plaintiff and its predecessors in a southerly direction to the paved public part of the road. In Welsh

⁶The Appellate Division Decision holds the abandonment argument, *inter alia*, as advanced by TNC to be "without merit", Seven Springs, LLC v. Nature Conservancy, *supra*, 855 N.Y.S.2d at 547.

v. Taylor, 134 N.Y. 450 (1892) the Court of Appeals held that the maintenance of a gate over a private alley for a period of 33 years coupled with the construction of a brick building, both of which blocked access, was insufficient to establish abandonment of the easement by the owner. In Welsh v. Taylor the Court's determination was based in part on the fact that the party asserting abandonment failed to present any evidence that the obstructions were used to exclude the owner (Welsh v. Taylor at 459). Construction of an obstruction on an easement has been found to be "merely evidence of non-user and nothing more", Butts v. Mereno, 24 Misc.3d 1230(A), 899 N.Y.S.2d 58 (Sup. Ct., Kings Cty. 2009); Will v. Gates, 254 A.D.2d 275, 276 (2nd Dept. 1998, quoting Welsh v. Taylor at 459).⁷

Further, TNC's cases are entirely distinct from this case because, unlike in TNC's cited cases, Rockefeller University did nothing to close off its easement to the south. It is undisputed that neither Rockefeller University nor the Plaintiff constructed the gate and (see Exhibit "E" to the accompanying Goldman Affidavit submitted simultaneously herewith) TNC, on October 19, 1990, writing to ConEd about ConEd's constructing a gate stated, *inter alia*:

" . . . we would expect Consolidated Edison to provide both Rockefeller University and The Nature Conservancy with keys to such gate."

As to this Plaintiff, Seven Springs never abandoned its private easement rights in Oregon Road. As set forth in **EXHIBIT "I"** to the Goldman Affidavit, less than one year after acquiring the property, Plaintiff filed an "Amended Verified Petition for A "Special Use Permit" which it submitted to the Town of North Castle (**EXHIBIT "I"** dated June 24, 1996). This Petition asserted Seven Springs' legal standing as an owner, and sought to reopen Oregon Road with the following language:

⁷The remaining cases cited by TNC on this subject were also presented to the Appellate Division and were successfully distinguished by the Plaintiff in its main and reply briefs submitted to that Court.

“G. REOPENING OF OREGON ROAD

18. In an effort to provide as many means of egress and ingress to the project as possible, the Petitioner will seek the reopening of Oregon Road and take all necessary and appropriate steps in connection therewith.”
(emphasis in body of text supplied)

THE AMENDED COMPLAINT IS NOT TIME-BARRED.

Point IV of TNC’s Opposition Memorandum (page 28) advances an argument that “the Amended Complaint is time-barred”. In support of this argument TNC cites (TNC Mem Opp, page 28) CPLR §212(a). That section is entitled “Possession Necessary to Recover Real Property” and applies to cases where there is an adverse possession claim and the title owner seeks to “recover” the subject property. This assumes that TNC intended to advance its affirmative defense of adverse possession of Plaintiff’s easement, however such affirmative defense and any argument relative thereto is completely omitted from TNC’s opposition to this summary judgment motion. Again, this is one of the arguments which the Appellate Division found to be “without merit” in this case.

Plaintiff did not commence this action to “recover” possession of adversely possessed property. It is Seven Springs’ position that it has never been out of possession of the subject property. Accordingly, TNC’s reliance on CPLR §212(a) as a statute of limitations time-bar is totally misplaced. The instant action was commenced under RPAPL §15 to quiet title to claims and is, in essence, a declaratory judgment action.

In addition, Seven Springs, less than one year after acquiring title to its property, filed an Amended Verified Petition (**EXHIBIT “I”**) to reopen Oregon Road, asserting its legal standing to do so as set forth, *supra*.

**SEVEN SPRINGS IS NOT CLAIMING AN
EASEMENT OVER LANDS IT DOES NOT ABUT**

Contrary to the assertions in Point V of TNC Memorandum of Law, Seven Springs is not claiming an easement over lands it does not abut although TNC has distorted Plaintiff's position as though Plaintiff had made such a claim. Plaintiff has not. TNC seeks to evade Plaintiff's entitlement to an easement over Oregon Road where Oregon Road abuts Plaintiff's property at its southwestern corner in order to travel southerly to the currently public part of Oregon Road. At page 29 of TNC's Opposition Memorandum of Law it states:

“. . . offers no basis in fact, and certainly no basis in law why it is entitled to an easement over that portion of Oregon Road which is owned entirely by TNC. Plaintiff appears to argue that, simply because its property abuts a portion of Oregon Road, it is therefore entitled to an easement over the entirety of Oregon Road - even that portion which it admittedly does not abut. That is not the law of New York.” **(Emphasis supplied)**

Plaintiff abuts all sections of Oregon Road in which it seeks to travel. TNC has completely misstated Plaintiff's position. Plaintiff has shown the factual basis as to why it is entitled to travel in any direction over Oregon Road, because Plaintiff's property is bounded by and abuts Oregon Road to the north, to the west and to the south – the precise locations in which Oregon Road exists and travels. Every map and survey submitted shows this to be true. Plaintiff has never argued (as it is accused of arguing by TNC) that it has the right to travel “even that portion which it admittedly does not abut”. Nowhere has Plaintiff made such a statement. Rather, Plaintiff has explained to this Court in its principal moving papers that its property abuts Oregon Road at the southwest corner and thus, according to the language of its deed, and in accordance with the case law, (set forth in the principal Memorandum of Law) Plaintiff has the right to travel in a southerly direction over that segment which abuts its southwest corner, through the segment of Oregon Road

beneath that segment which is owned by TNC on both sides of the road, to Plaintiff's own southerly segment of Oregon Road (acquired from Realis) to the currently public portion of Oregon Road in the vicinity of Pole 40. TNC makes much of the Plaintiff's citation of People ex rel. Milbrook v. Waldorf, 168 App. Div. 473 (2d Dept. 1915) which was reversed at 217 N.Y. 96. If one reads the Court of Appeals decision, it is apparent that such reversal is of no moment to the point advanced by Plaintiff, which was strictly for the purpose of showing the accepted definition of "abutting". The Court of Appeals did not reverse that definition. In fact, the Court of Appeals uses the term "fronting" and "abutting" in its decision, clearly denoting that both terms are distinct from one another.

**ENGINEERS' REPRESENTATIONS
DO NOT WORK TO DIVEST TITLE**

TNC refers to certain statements made in DEIS and FEIS documents and applications. Apart from differing outside circumstances influencing the use or projected use of Seven Springs' property (see the Goldman Affidavit in this regard), parol declarations by engineers⁸ for Seven Springs as to Seven Springs' title, cannot divest or impair that title and such declarations cannot benefit TNC since they are inadmissible to impeach good title. Jackson v. Anderson, 4 Wend. Rep. 474, 482; Jackson v. Cary, 16 John. Rep. 302; Jackson v. Vosburgh, 7 John. Rep. 186; Jackson v. Miller, 6 Cowen. 751. (See also, Hawley v. Bennett, 5 Paige Ch. 104, 3 N.Y. Ch. Ann. 646 (1835): "The admissions of a person . . . made under a mistake of law, and which are wholly inconsistent with his written evidence of title, cannot be received for the purpose of destroying his title to the land.")

⁸TNC completely omits the fact that Plaintiff applied, through its then attorneys, for the "reopening of Oregon Road" – within the year after its acquisition of title to the property, and by such legal petition, was required to and did, assert its legal standing. Thus, in 1996, Plaintiff asserted, correctly, its legal entitlement.

RELATIVE TO THE WIDTH OF THE ROAD, PLAINTIFF MAY USE THE RIGHT-OF-WAY IN ANY MANNER WHICH IS NECESSARY AND CONVENIENT FOR THE PURPOSE FOR WHICH IT WAS GRANTED

Point VI of TNC's Opposition Memorandum attempts to focus on an exact width for the extent of the easement Plaintiff seeks to enforce. At the time of the grant (in January 1973), it is established that Oregon Road was clearly used as a public road open to vehicular traffic in all directions. Plaintiff seeks only the same easement now that was granted to its predecessors by the Meyer Foundation in 1973.

Plaintiff's easement was granted "in general terms". It did not have specific widths in the language of the grant. Accordingly, the rule of construction is to construe the extent of the use of the easement as is "necessary and convenient for the purpose for which it [is] created." Mandia v. King Libr & Plywood Code, 179 A.D.2d 150, 158 (2d Dept. 1992); Somers v. Shatz, 22 A.D.3d 565, 802 N.Y.S.2d 245 (2d Dept. 2005). Apart from this issue being discussed in Plaintiff's principal moving papers, it is clear (again) that at the time of the grant from the Meyer Foundation in 1973 Oregon Road was a public road, open to vehicular traffic, and that the grant contemplated such usage. The width of the easement will be determined by highway law and does not raise a factual issue which should preclude summary judgment on this motion. The issue on this motion is the validity and existence of an express easement over Oregon Road.

In Missionary Society of Selesian Congregation v. Evrotas, 256 N.Y. 86 (1931) it was held that even a grant "no broader than a right of passage" would entitle the Grantee:

" . . . to break up the soil, level irregularities, fill up depressions, blast rocks and not only remove impediments, but supply deficiencies in order to construct a suitable road."

See, also, Ickes v. Bust, 68 A.D.3d 823, 890 N.Y.S.2d 641 (2d Dept. 2009); Bilello v. Thella, 223 A.D.2d 522, 636 N.Y.S.2d 112 (2d Dept. 1996). Defendants have again attempted to create a "non-issue".

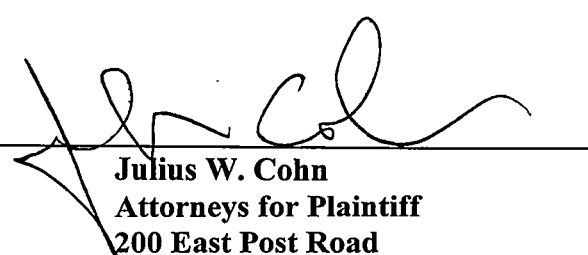
Plaintiff has established its rights on this motion to a declaration of the validity and the existence in its favor of an express easement over Oregon Road.

Dated: White Plains, New York
December 10, 2010

Yours, etc.,

COHN & SPECTOR

By: _____

A handwritten signature in black ink, appearing to read 'Julius W. Cohn', is written over a horizontal line. The signature is fluid and cursive.

Julius W. Cohn
Attorneys for Plaintiff
200 East Post Road
White Plains, New York 10601
(914) 428-0505

Of Counsel: Julius W. Cohn, Esq.
Wendy E. Wells, Esq.

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

LOURDES SALVADOR, being duly sworn, deposes and says:

That I am over the age of 18 and not a party to the within action; that I reside in Middletown, New York, that on December 10, 2010, I served the within **REPLY MEMORANDUM OF LAW ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** upon:

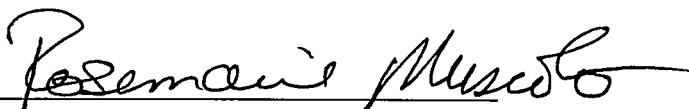
TO: Benowich Law, LLP
1025 Westchester Avenue
White Plains, NY 10604

Oxman, Tulis, Kirkpatrick, Whyatt & Geiger
120 Bloomingdale Road
White Plains, NY 10601

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. (Federal Express Tracking No.: 794205119126 and 794205140371).


LOURDES SALVADOR

Sworn to before me this
10th day of December, 2010


Rosemarie Muscolo

Notary Public, State of New York
4753358
Qualified in Westchester County
Commission Expires February 28, 2014

SEC #7

VSN

~~OKB/D~~
~~8/25~~

DCM Motion Transmittal Form

Date: 7-19-10

~~NC~~
~~9/3/10~~ ~~OPM~~
~~8/10~~

FAN
8/31/10

Preliminary Conference Part

Compliance Part

Settlement Part

Trial Readiness Part

Seven Springs v. The Nature Conservancy

Index# 9130106

The attached motion is being referred to your part and shall be:

set down for an immediate Conference

calendared for Oral Argument on the return date. Papers must be delivered to the Law Department three (3) days in advance of the return date

held until it is fully submitted and then referred to the IAS justice

Alan D. Scheinkman
Administrative Judge

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED

SEVEN SPRINGS, LLC,

RECEIVED

Index No. 9130/06 JUN = 1 2011

Plaintiff,

NOV 03 2010

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

- against -

CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

**AFFIRMATION
IN OPPOSITION
TO PLAINTIFF'S
MOTION FOR
SUMMARY JUDGMENT**

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHUE and
JOANN DONOHUE,

Defendants.

-----X

LOIS N. ROSEN, an attorney admitted to practice before the Courts of the State of New York, affirms as follows under penalties of perjury:

1. I am of counsel to the law firm Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, attorneys for defendants Robert Burke, Teri Burke, Noel B. Donohoe and JoAnn Donohoe (the "Individual Defendants"), and am fully familiar with the facts set forth herein. This affirmation is submitted in opposition to plaintiff's motion for summary judgment for various relief including, *inter alia*, that it possesses an easement no less than 50 feet in width for ingress and egress for pedestrian and vehicular traffic over Oregon Road to and from the Seven Springs Parcel to the south to Oregon Road. For the reasons set forth in detail in the opposition papers served by co-defendant The Nature Conservancy ("TNC"), it is clear that plaintiff possesses no such easement. Therefore, its motion should be denied.

2. I have reviewed the following documents prepared by TNC and submitted in opposition to plaintiff's motion: (a) affidavit of Frederick Werwaiss, sworn to October 5,

2010 (“Werwaiss Affidavit”); (b) affidavit of Paula Klein, sworn to August 26, 2010 (“Klein Affidavit”); (c) affidavit of Dennis M. Lowes, sworn to October 26, 2010 (“Lowes Affidavit”); and (d) The Nature Conservancy’s Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment dated October 26, 2010 (“TNC Memorandum”).

3. I hereby adopt and incorporate by reference all of the arguments set forth in the Werwaiss Affidavit, the Klein Affidavit, the Lowes Affidavit, and the TNC Memorandum. As set forth therein, plaintiff has no easement – express or implied – over that portion of Oregon Road which is at the heart of this lawsuit.

WHEREFORE, for the reasons set forth by co-defendant TNC, as adopted and incorporated by reference herein, the Individual Defendants respectfully request that plaintiff’s motion for summary judgment be denied in its entirety. Instead, the Individual Defendants join in TNC’s request that the Court award TNC summary judgment declaring that plaintiff has no easement over the contested portion of Oregon Road. (*See* TNC Memorandum, p. 5)

Dated: White Plains, New York
October 27, 2010


LOIS N. ROSEN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/06

Plaintiff,

AFFIDAVIT OF SERVICE

- against -

THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE, TERI
BURKE, NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.

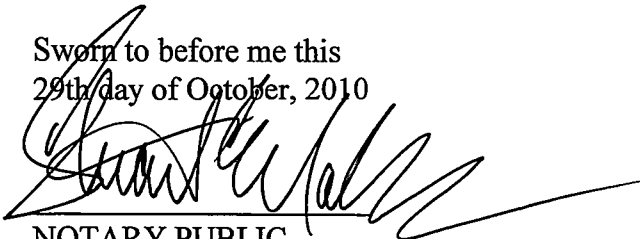
-----X
STATE OF NEW YORK)

COUNTY OF WESTCHESTER) ss:

LORRAINE COWEN, being duly sworn, deposes and says: I am not a party to the action: I am over the age of 18 years old; I reside in Scarsdale, New York and on October 29, 2010 I served a copy of the within Affirmation in Opposition to Plaintiff's Motion for Summary Judgment upon the party listed below annexed hereto by mailing same by overnight delivery. The service used was Federal Express.


LORRAINE COWEN

Sworn to before me this
29th day of October, 2010


NOTARY PUBLIC

STUART E. KAHAN
Notary Public, State of New York
No. 02KA4769001
Qualified in Westchester County 14
Commission Expires June 30, 20__

TO: Julius W. Cohen, Esq.
Cohen & Spector
Attorneys for Plaintiff
200 E. Post Road
White Plains, New York 10601

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
SEVEN SPRINGS, LLC,

Index No.: 9130/06

Plaintiff,

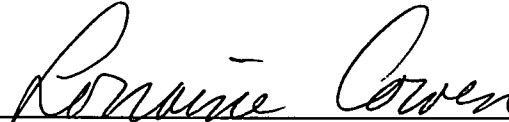
AFFIDAVIT OF SERVICE

- against -

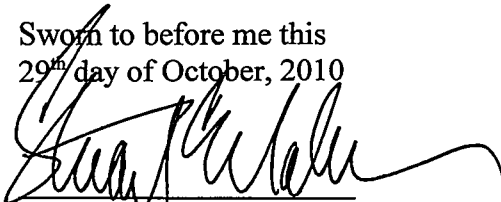
THE NATURE CONSERVANCY, REALIS ASSOCIATES,
THE TOWN OF NORTH CASTLE, ROBERT BURKE, TERI
BURKE, NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.
-----X

LORRAINE COWEN, being duly sworn, deposes and says: I am not a party to the action: I am over the age of 18 years old; I reside in Scarsdale, New York and on October 29, 2010, I served a copy of the within Affirmation in Opposition to Plaintiff's Motion for Summary Judgment upon the party listed below by mailing same by regular mail in a sealed envelope, with postage paid thereon, in a official depository of the U.S. Postal Service within the State of New York.


LORRAINE COWEN

Sworn to before me this
29th day of October, 2010


NOTARY PUBLIC

STUART E. KAHAN
Notary Public, State of New York
No. 02KA4769001
Qualified in Westchester County 14
Commission Expires June 30, 2014

TO: Leonard Benowich, Esq.
Roosevelt & Benowich, LLP
1025 Westchester Avenue
White Plains, NY 10604

Index No. 9130/06 Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SEVEN SPRINGS, LLC,
Plaintiff,
- against -

THE NATURE CONSERVANCY, REALIS ASSOCIATES
THE TOWN OF NORTH CASTLE, ROBERT BURKE, TERI
BURKE, NOEL B. DONOHOE and JOANN DONOHOE,

Defendants.

**AFFIRMATION IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP
Attorneys for Defendants Robert Burke, Teri Burke, Noel B. Donohoe and Joann Donohoe

120 BLOOMINGDALE ROAD
SUITE 100
WHITE PLAINS, NY 10605
(914) 422-3900

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: Signature
Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within-named Court on 20

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. , one of the judges of the within-named Court, at on 20 , at M.

Dated:

OXMAN TULIS KIRKPATRICK WHYATT & GEIGER LLP
Attorneys for

120 BLOOMINGDALE ROAD
SUITE 100
WHITE PLAINS, NY 10605

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

Check Applicable Box

Attorney's Certification

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for

I have read the annexed

Attorney's Verification by Affirmation

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated: _____
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am

Check Applicable Box

in the action herein; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

the of a corporation, one of the parties to the action; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on _____, 20 _____
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On _____, 20 _____, I served a true copy of the annexed in the following manner:

Check Applicable Box

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

by delivering the same personally to the persons at the address indicated below:

by transmitting the same to the attorney by facsimile transmission to the facsimile telephone number designated by the attorney for that purpose. In doing so, I received a signal from the equipment of the attorney served indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service, addressed to the address of the addressee(s) as indicated below, which has been designated for service by the addressee(s) or, if no such address has been designated, is the last-known address of the addressee(s):

by transmitting the same to the attorney by electronic means upon the party's written consent. In doing so, I indicated in the subject matter heading that the matter being transmitted electronically is related to a court proceeding:

by depositing the same with an overnight delivery service in a wrapper properly addressed, the address having been designated by the addressee(s) for that purpose or, if none is designated, to the last-known address of addressee(s). Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on _____, 20 _____

(Print signer's name below signature)